ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL DECISIONS

INTEREST ARBITRATIONS VOLUME 4

1988 - T/0020/91

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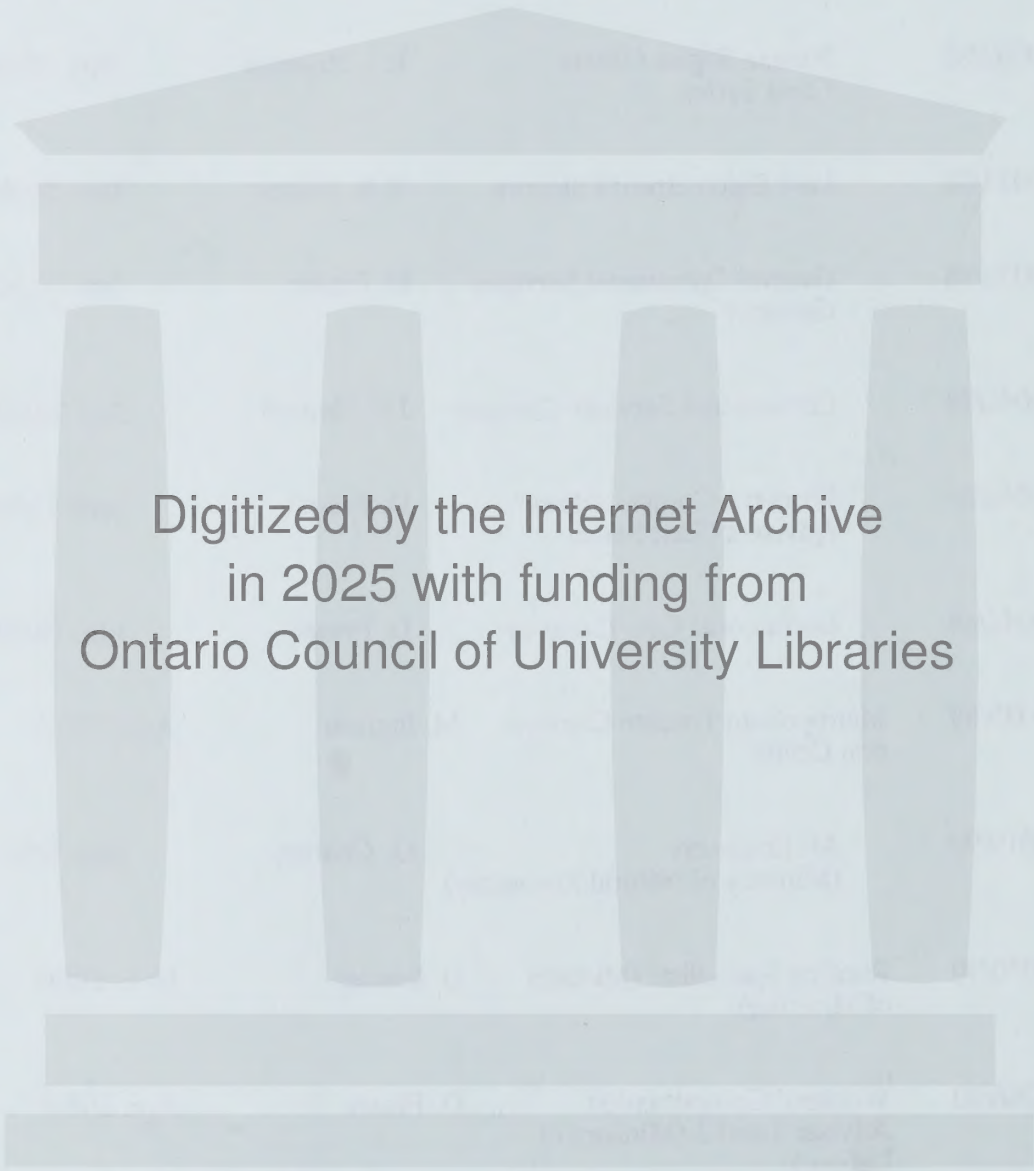
1988 - 1991 T/0020/91

File No.	Re:	Chairman	Date
T/0002/88	Human Rights Officer Class Series	R.J. Roberts	Nov. 29/88
T/0021/88	Law Enforcement Category	B.B. Fisher	Dec. 29/89
T/0039/88	General Operational Services Category	D. Fraser	Jan. 15/90
T/0042/88	Correctional Services Category	J.E. Emrich	Jan. 24/90
T/0046/88	Workers' Compensation Advisers Class Series	D. Fraser	June 15/90
T/0048/88	Institutional Care Category	D. Fraser	Jan. 19/90
T/0039/89	Metropolitan Toronto Convention Centre	M. Ingram	Apr. 27/90
T/0019/90	Air Engineers (Ministry of Natural Resources)	G. Charney	Mar. 5/92
T/0030/90	Roofing Specialists (Ministry of Housing)	D. Stanley	Nov. 29/91
T/0046/90	Workers' Compensation Adviser 1 and 2 (Ministry of Labour)	D. Fraser	Apr. 26/91
T/0004/91	Communications Operators (Ministries of Health, Natural Resources, Solicitor General and Transportation)	B. Keller	Feb. 15/92



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File No.	Re:	Chairman	Date
T/0009/91	Utility Plant Instrument Technician (Ministry of the Environment)	M. Saltman	Jan. 4/93
T/0020/91	Contract Review Officer (Ministry of Transportation)	B. Keller	July 25/92

Ontario Public Service Labour Relations Tribunal
Fonction Publique de l'Ontario Tribunal Administratif des Relations du Travail

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8 416/598-0688

T/0002/88

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

R.S.O. 1980, c.108

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union
(Ventura et al)

Complainant

and

The Crown in Right of Ontario
(Ministry of Labour)

Respondent

Before: R.J. Roberts — Vice-Chairperson
W. Walsh — Member
J. Campbell — Member

For the Complainant: J. Miko
Negotiator
Ontario Public Service Employees Union

For the Respondent: W. Gorchinsky
Director
Staff Relations Branch
Management Board of Cabinet

Hearing: August 29, 1988

DECISION

This arbitration concerns the establishment of salary ranges for the Human Rights Officer class series. Both parties agreed that the matter was properly referred to this Board of Arbitration in accordance with Article 5.9 of the Collective Agreement, which reads as follows:

> When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

Both parties also recognized that this Board was properly constituted pursuant to Section 10 and 11 of the Crown Employees Collective Bargaining Act and that it had jurisdiction to establish salary rates based upon certain revisions to the classification standards for the Human Rights Officer class series.

It seems that as early as the Spring of 1977, inquiries were made of the Civil Service Commission regarding the possibility of reviewing the classification and salary ranges of Human Rights Officers. Nothing came of that attempt, and in March, 1983, the matter was revived. This was when the position specification for Human Rights Officers was rewritten more to accurately reflect their duties and responsibilities. To this specification there was added the following note, "This position specification

reflects the additional responsibilities resulting from the changes in the Human Rights Code. The class standard needs to be reviewed in light of the additional responsibilities." Despite this, however, there was no response from the Civil Service Commission.

In late October, 1984, all Human Rights Officers of Ontario filed classification grievances as part of an attempt to bring matters to a head. There followed a number of meetings between respresentatives of the grievors, the Civil Service Commission, and the Ministry of Labour; however, the matter remained unresolved. In the course of these events, arbitration hearings which had been scheduled were postponed in order to permit the continuation of discussions toward a settlement. The panel of the Grievance Settlement Board was made aware that the Ministry was nearing completion of a revision of the class standards for the Human Rights Officers and that once these were issued, the Union would, under the Collective Agreement, have a right to negotiate with management the salary ranges to be assigned.

On May 11, 1987, pursuant to agreement between the parties the panel issued the following Order:

> The Board hereby declares that new classifications or class standards are being created or existing classifications or class standards are being revised pursuant to then Article 5.8, now Article 5.9 of the collective agreement. The parties' rights under then Article 5.8, now Article 5.9, are now in force.

It was agreed between the parties that the hearing scheduled for June 11 and 18, will not be adjourned and that this Board has jurisdiction to deal with:

1. The appropriateness of the new or revised classifications or class standards;

2. Retroactivity of the classifications or class standards, including retroactivity of salary and benefits;

3. Appropriate salary and benefit ranges for the new or revised classifications or class standards;

4. Interest, if any, that may be payable.

DATED at Toronto, Ontario this 11th day of May, 1987.

R. J. Roberts, Vice-Chairman

R. Russell, Member

H. Roberts, Member

Subsequently, on August 4, 1988, the parties entered into the following Memorandum of Settlement:

Without precedent, and with regard to the Order of the Board dated at Toronto, Ontario, on 11th day of May, 1987, and issued by a panel chaired by R. J. Roberts, Vice-Chairman, Grievance Settlement Board, in the matter of an arbitration between OPSEU (Ventura et al) and the Crown in the Right of Ontario (Ministry of Labour) GSB files 1534/84 to 1570/84 inclusive, and 1245/85, the parties hereto agree to amend the aforesaid Order as follows:

1. In view of the fact that the parties have agreed upon the appropriateness of new or revised classifications or class standards, but have been unable to reach agreement on the salary rates, an interest arbitration shall be established to convene hearings at expeditiously as possible before September 1, 1988 pursuant to Article 5.8 of the Collective Agreement and Sections 11 and 12 of the Crown Employees Collective Bargaining Act.

2. The Chair LRT, will be asked to appoint the Nominees of the Parties to the interest board of arbitration and will appoint Mr. R. J. Roberts as Chairman. It is agreed that this Board has jurisdiction to determine the salary rates for the new classification of H.R.O. 1 and 2, as of August 26, 1987.

3. It is agreed that the panel of G.S.B. chaired by Mr. R. J. Roberts shall remain seized of the issues of retroactivity on salary rates flowing from the claims of improper classification and interest on the salaries to be paid to H.R.O.'s and shall hold hearings as soon as possible but no later than September 30, 1988.

The purpose of this Agreement was, inter alia, to permit this Interest Arbitration Board of the Labour Relations Tribunal to determine the salary rates for the new or revised classifications of Human Rights Officers 1 and 2, as of August 26, 1987.

Before proceeding to consider the submissions of the parties, it might be advisable to set forth some general background regarding the Human Rights Officer series. This series covers the positions of employees in the Ministry of Citizenship -- formerly the Ministry of Labour -- who administer and enforce the Ontario Human Rights Code. There are two levels within this series. The first, (HRO 1) is primarily responsible

for intake of complaints, performing preliminary investigations and providing information to the public. This level also covers entry and training positions for employees who lack the skill and experience required to perform work at the HRO 2 level.

The HRO 2 level is the full working level. Persons occupying this position are responsible for in-depth investigation of complaints, performance of conciliation and mediation between the parties in an attempt to achieve a mutually agreeable resolution, and recommending further action subject to ratification by the Ontario Human Rights Commission. This level also covers positions in which employees provide advisory and consultative services in certain areas of specialization.

At the hearing, the Union submitted that since the Human Rights Commission was established in 1962, there had been such significant changes in the legislation, and hence the complexity of the job of Human Rights Officers, that a significant increase in salary was more than justified. These changes included:

- expansion of coverage to include discrimination on grounds of sex (including pregnancy), marital status, physical and mental handicap, and sexual orientation
- broadening of the definition of discrimination to include constructive or systemic discrimination (in addition to direct discrimination)
- inclusion of harassment (e.g. sexual harassment, racial harassment) as explicitly prohibited behaviour
- provision for Commission review of voluntary employment equity programs

establishment of a Race Relations Division, with responsibility for pro-active work with major institutions.

The Union also identified four social trends which, it was submitted, demonstrated how the complexity of work for Human Rights Officers had been compounded over the years. These were as follows:

1. Changes in ethnic and racial composition of Ontario's population since the mid 1969's - an increase in immigration from third world countries and a declining birthrate; the rate of immigration movements and the concentration of newcomers in large cities has increased the potential for inter-group intolerance and open conflict in the workplace, the neighbourhood, and the community.

2. Changes in beliefs - in 1962 discrimination was thought to take place through conscious, overt actions against individuals; over time it has been recognized that the most pervasive discrimination results from seemingly neutral and covert practices which are embedded in institutions and employer organizations. Even when no conscious intent to discriminate is evident, practices are having adverse impact on minorities, women and other groups seeking employment, housing, or access to services and facilities.

3. Changes in the modern market place have increased the tendency of business to be conducted through intermediaries or brokers such as employment placement agencies, real estate agencies, and advertising agencies. The laundering of discrimination by such agencies goes undetected because their victims may never be made aware of it.

4. Changes occurred through increasing aspirations and expectations of minorities, and women as they began to recognize discrimination as collectively based and categorically applied rather than resulting from individual shortcomings and isolated acts of exclusion. As well, there has been over the years a growing constituency seeking and often receiving legislative protection from discrimination. This includes groups like the handicapped; single parents; recipients of social assistance; and homosexuals.

The old class standard for the HRO 1 and 2, which was issued in 1969, was as follows:

These class series cover the positions of officers of the Ontario Human Rights Commission engaged in the promotion and enforcement of the Ontario Human Rights Code and the Age Discrimination Act. The Commission is responsible for the administration of the legislation which prohibits discrimination because of race, creed, colour, nationality, ancestry, place of origin, or age, particularly in the fields of housing and employment in Ontario. The Commission's policy is the promotion of the recognition and protection of human rights through conciliation and education rather than enforcement and prosecution. To implement this policy it has undertaken a broad program of conciliation, education and research. Complaints of discrimination are thoroughly investigated and settled by officers of the Commission through discussion and mediation, if possible. The legislation provides for public hearings and Court action when conciliation fails. Officers prepare reports and appear as witnesses when charges are laid by the Commission. The research and educational programs have two objectives: to acquaint minority and ethnic groups with their legal rights and to promote a climate of understanding and respect among all groups. The Commission publishes and distributes pamphlets, brochures and news letters. It arranges special meetings and conferences and participates in discussions on radio and television. It carries out studies and surveys, and sponsors major sociological research studies at universities.

SKILLS AND KNOWLEDGE REQUIRED:

Sound knowledge of the fundamentals of human behaviour, social organization and social change; thorough knowledge of the aims and objectives of the Ontario Human Rights Code and the Age Discrimination Act; a good understanding of cultural integration problems; and a firm sense of purpose in the promotion of program objectives to create a climate of understanding and support in the community; ability to communicate effectively both orally and in writing; ability to develop and maintain good working relationships with officials of government, community agencies and organizations; skill in the techniques of persuasion and conciliation; a high degree of tact and good judgement; ability to deal with sensitive and contentious situations; ability to co-ordinate a variety of activities and work with a minimum of supervision.

HUMAN RIGHTS COMMISSION OFFICER 1

This class covers positions of trainees for Human Rights Commission Officers lacking the required related work experience. Employees receive on-the-job training, under the supervision of a senior Human Rights Commission Officer, in all aspects of the work involved in administering and enforcing the Ontario Human Rights Code and the Age Discrimination Act. As training proceeds, employees are expected to undertake progressively more difficult

assignments, working in one or more of the areas of work, such as reconciling opposing views, increasing the public awareness of discriminatory situations, and gathering information relating to problems involving human rights. After about two years training, employees are expected to work independently as fully qualified Human Rights Commission Officers.

While in training, employees assist other officers in investigating formal complaints of discrimination and in the process of effecting settlements through conciliation and persuasion wherever possible. They assist in the Commission's educational programme to eliminate racial, religious and other discrimination through the preparation of publications and reports. Under supervision, they co-operate with educational religious, ethnic, labour and welfare organizations in planning conferences, seminars and community institutes. They may address meetings and take part in private and public discussions to overcome prejudice and discrimination. They assist, as required, in research projects by constructing questionnaires, interviewing, analyzing and tabulating data, and by writing reports.

MINIMUM STAFFING STANDARDS:

1. Bachelor's degree in the social sciences from a university of recognized standing.

2. Preferably some directly related experience working in an agency dealing with racial, community or cultural problems.

3. Maturity of judgment.

HUMAN RIGHTS COMMISSION OFFICER 2

This class covers the positions of qualified employees of the Ontario Human Rights Commission engaged in the work of administering and enforcing the Ontario Human Rights Code and the Age Discrimination Act under general supervision. They promote the Commission's aims and objectives and assist in all phases of its program, conciliation, education and research. As conciliators, they investigate formal complaints of discrimination as assigned using persuasion and conciliatory techniques to ensure compliance. Difficult or unresolved disputes are referred to their supervisor. They participate in the Commission's educational program by assisting in the preparation of brochures and reports, maintaining liaison with education, ethnic, labour and welfare organizations and attending or assisting in the organization of conferences and seminars. They assist in the development and conduct of research projects by constructing questionnaires, interviewing, analyzing and tabulating data and writing reports.

MINIMUM STAFFING STANDARDS:

1. Bachelor's degree in the social sciences from a university of recognized standing.

2. Two years of directly related experience as a Human Rights Commission Officer 1 OR several years of related experience working in an agency dealing with racial, community, or cultural problems.

3. Maturity of judgment.

The new class standards, which were agreed upon between Union and Management, read as follows:

HUMAN RIGHTS OFFICER

The Human Rights Officer series covers positions in which the primary responsibilities are directed to the administration and enforcement of the Ontario Human Rights Code.

Responsibilities may include a range of the following:

- discussing initial complaint with members of the public, providing advice/information on all aspects of the legislation, determining validity of the complaint and jurisdiction under the legislation, and assisting in filing of a formal complaint;

- initiating and conducting investigations of alleged violations; conciliating/mediating between complainants and respondents in order to achieve compliance with the legislation; documenting information and evidence gathered; participating in the preparation of cases for hearings, acting as a witness and as an advisor to counsel for boards of inquiry;

- developing and conducting affirmative action and public education programs on the provisions and principles of human rights legislation, directed to identifying and eliminating direct/systemic discriminatory practices;

- providing consultation and advice to employers, unions, associations and community groups with a view to reducing tensions arising from racial/ethnic/cultural differences and all other prohibited grounds of discrimination;

- promoting, developing and evaluating programs in the public and private sectors designed to improve race relations.

Allocation Criteria:

The allocation of a position to one of the two levels within the series is based on an evaluation against the following criteria, which are used to differentiate between levels:

Knowledge and Skills:

- the breadth of knowledge of human rights and other legislation, policies, procedures and programs, legal requirements, Boards of Inquiry decisions and precedents from other jurisdictions;
- the extent of knowledge required of the dynamics of discrimination and effects of prejudice and stereotyping on persons protected under the human rights legislation;
- the depth of investigative and analytical skills required, with related knowledge such as of rules of evidence;
- the extent of negotiating/mediating skills required;
- the extent of knowledge required, such as of client community, internal and external organizations and resources;
- the degree of program evaluation and program development skills;
- the type and level of communication, interpersonal and presentation skills required.

Judgement and Accountability:

- the number and complexity of variables to be considered in selecting a course of action and the extent of completion towards which work is taken to achieve problem resolution;
- the impact of decisions and recommendations made;
- the contribution to program and policy development;
- the extent of supervision received;
- the extent of guidance available from staff, policy directives and guidelines, manuals, other established sources;
- the relative likelihood of errors being detected and the impact of errors.

Levels:

There are two levels within the series, as follows:

Human Rights Officer 1

Employees in positions at this level are primarily responsible for complaint intake, the conduct of preliminary investigations and public information. Complex complaints such as those involving more than one aspect of the legislation, multi complainants, and/or those requiring investigation on others' premises are not normally handled at this level, and are referred to the Human Rights Officer 2 level or other senior staff.

This level may also be used for entry and training positions where employees lack the skills and experience required to perform at the Human Rights Officer 2 level.

Human Rights Officer 2

Employees in positions at this level are responsible for conducting in-depth complaint investigations, conciliating/mediating between parties involved in order to bring complaints to resolution, subject to ratification by the Ontario Human Rights Commission.

This level also covers employees who provide advisory and consultative services in an area of specialization under the legislation to the public and private sectors, where program development and evaluation is an integral part.

HUMAN RIGHTS OFFICER 1

This class covers positions of employees who provide complaint intake services, public information and education, and limited investigative services within the framework of human rights legislation, policies and programs. This level may also be used for entry and training positions.

Characteristic Duties:

Employees in this class respond to enquiries/complaints from the public related to human rights legislation and refer matters more properly addressed by other agencies. They explain the legislative provisions which relate to the alleged violations, determine validity of the complaint and jurisdiction under the legislation, and draft formal complaints of discrimination. They contact potential respondents, e.g. employers, landlords, to obtain and verify evidentiary information and, where possible, gain their compliance/achieve settlement. They also participate as required in public education activities, and may undertake research projects.

Knowledge and Skills:

The performance of this work requires a good knowledge and understanding of the Human Rights Code sufficient to interpret and explain its provisions and determine applicability to complaints received; knowledge of other legislation and regulatory agencies in order to make referrals; an awareness of racial/cultural/community issues and an understanding of the dynamics of discrimination; effective oral and written communications, interviewing, and problem solving skills to deal with client complaints.

Judgement and Accountability:

Judgement is exercised in the identification of issues based on information elicited from complainants, determining legislative jurisdiction, and deciding on appropriate course of action. Employees are accountable for initiating and conducting investigations by personal interview, telephone and/or letter, where they determine the complaints may lend themselves to resolution by such methods. They are accountable for adhering to the principles of administrative fairness and exercising discretion in dealing with the parties to a complaint. Employees are also accountable for responding to enquiries, and exercise judgement in explaining the applicability of legislation or the reasons for referral, either to higher investigative levels or to other agencies.

Errors or delays in documenting and/or redirecting enquiries, inappropriate initiation of an investigation, or failure to provide appropriate and/or correct information/advice could result in delays or future difficulties in investigation, or could lead to a legitimate complaint being abandoned.

HUMAN RIGHTS OFFICER 2

This class covers positions of employees who conduct comprehensive investigations into alleged violations of the Ontario Human Rights Code and conciliate/mediate between parties to achieve settlement, AND/OR who provide expert consultative and advisory services under the legislation.

Characteristic Duties:

Employees establish case priorities in consultation with the supervisor as required, determine issues, develop investigative strategies and conduct investigations. Such investigations typically involve field work, analysis of records, interviewing witnesses and chairing fact-finding conferences. In order to negotiate settlements they conduct conciliation/mediation meetings with complainants, respondents, their lawyers, unions and other representatives. They draft legally sound minutes of settlement. Where a settlement is not reached, they prepare an analysis of the evidence with recommendations to the Commission on whether or not to appoint a board of inquiry or to dismiss the complaint. They are required to explain own decisions and/or recommendations to the parties concerned, prepare documentation and appear at hearings. Employees at this level may also provide intake services.

Some employees in this class specialize in certain areas covered by the human rights legislation, such as the handling of cases which fall under provisions relating to handicap. They may provide training and consultation in their area of specialization.

In other positions, employees work with and give advice to a diverse clientele (e.g. community groups, police, boards of education, governments, corporations, unions) on the research, design, development, evaluation and implementation of policies and programs directed towards improved race relations. They also chair race relations policy/program committees and working groups.

All positions may be involved in public education activities in order to promote the principles and practices of equal treatment and freedom from the effects of prejudice.

Knowledge and Skills:

The performance of this work requires complete understanding of the content and intent of the Ontario Human Rights Code; good knowledge of other related provincial and federal legislation, relevant policies, practices and jurisprudence; knowledge of and ability to apply legal technical standards of proof and rules of evidence; a sound understanding of work place/institutional /community group operations, the dynamics and effects of discriminatory attitudes and practices, and employer/employee relations; effective investigatory, analytical, mediation and negotiation skills as well as the ability to maintain composure and impartiality in dealing with a wide variety of situations involving complex issues having few direct precedents and high levels of conflict/confrontation. Effective communication, interpersonal and presentation skills are required.

Some positions which specialize in a particular area under the legislation require additional knowledge in the specialty e.g. knowledge of medical terminology for dealing with handicap complaints/issues; knowledge of systemic discrimination patterns.

Judgement and Accountability:

Employees are accountable for handling complaints related to human rights legislation either in a specialty area under the legislation or geographic location. Judgement is exercised in setting priorities, developing investigation and conciliation/mediation strategies, determining scope and methodology of investigations, ensuring the thoroughness of investigations and analyses of evidence, and arriving at equitable and defensible conclusions; determining adherence to human rights legislation, policy guidelines, Commission standards, legal requirements and ensuring that the principles of administrative fairness are followed.

Incumbents are accountable for advising respondents/groups/employers on the provisions of legislation in such a way as to gain their voluntary compliance; accountable to complainants for the review and investigation of their complaints; accountable to complainants and respondents for the substantiation of decisions and the fairness of resolutions.

In other positions in addition to or in place of the foregoing, employees are accountable for providing consultation and advice to a diverse clientele on the development of policies and programs to improve race relations and eliminate discriminatory practices.

Errors in application/interpretation of legislation, delays in responding to complaints, neglect of a component of a case, inadequate settlements, could cause financial hardship, denial of rights, perpetuation of discrimination to claimants or respondents; inadequate preparation for boards of inquiry could cause reversal of decisions, thereby compounding future problems by setting inappropriate precedents and/or resulting in the improper treatment of complainants/respondents; disregarding legal considerations or principles of administrative fairness could lead to court action and/or judicial review of Commission procedures. Failure to coordinate actions within appropriate timeframes or to follow up on implementation of settlement terms could cause delays in compensation to complainants. Failure to properly handle complex cases/issues could have financial and social consequences, and necessitate involvement of senior officials in order to resolve problems generated by errors in fact or judgement. Misleading advice to groups/public could jeopardize credibility of progress and lead to increased racial tensions/conflicts.

In its brief, the Employer submitted that the revised standards described the same job functions as the old 1969 version. The only thing that differed, the Employer submitted, was that the revised standards used current factorial terminology, employing the generic factors "skills and knowledge", "judgment" and "accountability" as allocation criteria. These criteria required the job to be described, it was submitted, in significantly more detail than the old "grade description" format employed by the 1969 standards. The point was, the Employer said, that the increased detail should not be taken as an indication that the job was altered.

In support of this contention, the brief for the Employer entered into a detail comparison of the old and revised standards. This comparison, it was suggested, showed that the old and revised standards reflected the same level of work. The addition in the revised standards to describe positions whose function it was to provide expert consultation, consultative and advisory services in a particular area of specialization was, it was submitted, a change of form and not substance. The same held true, the Employer submitted, in the area of knowledge and skills and judgment and accountability. The level at which these functions had to be performed, it was suggested, remained the same. Nothing had changed. In the view of the Employer there simply was no substantive change in the levels of work described by the old and revised standards.

On the issue of relative worth, the Union compared the work of Human Rights Officers to that of Pay Equity Review Officers; Grievance Settlement Officers; and, Labour Relations Officers. The Employer, on the other hand, sought to make comparisons with the work of Occupational Health and Safety Inspectors and Employment Standards Auditors. The divergence in compensation between these two difference sets of comparisons was significant. The Union showed that generally Human Rights Officers were paid 22 to 24% less than employees in the classifications that the Union alleged were comparable. The Employer showed that Human Rights Officers were within 1% of the wages being paid to

employees in the classifications which the Employer alleged were comparable.

The Employer took great exception to the comparisons that the Union attempted to make. These positions, it was submitted, were all outside the bargaining unit and under Section 12 (2)(c) of the Crown Employees Collective Bargaining Act, it was submitted, the Board was not entitled to make comparisons with such classifications. Section 12 (2)(c) sets forth certain factors to be taken into account by the Board. It reads as follows:

> the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; ...

Because the Crown Employees Collective Bargaining Act solely related to bargaining unit employees, the Employer submitted, the "classifications of employees" to which Section 12 (2)(c), above referred could only be those within the bargaining unit.

The delicacy of referring to classifications from outside the bargaining unit, the Employer submitted was one which both Union and Management appreciated and in support of this submission the Employer referred us to Re Ontario Public Service Employees Union and Management Board of Cabinet, February 28, 1986, (Scott). In that case, the Union objected to reference by the Employer to a salary of a classification which was excluded

from the bargaining unit in circumstances, apparently, in which direct comparisons were not even sought to be made. The Board, nevertheless, concluded that because the Union itself had eluded to the management classification in question in submitting that the compensation levels should be brought closer, it was legitimate for the Employer to make the Board aware of the differences in the rates.

We believe that apart from underlying the delicacy of making comparisons between bargaining unit and excluded classifications, the Scott award, above, illustrates the inadvisability of making any hard-and-fast ruling that Section 12 (2)(c) of the Crown Employees Collective Bargaining Act forbids consideration of such comparisons. There may, indeed, be situations in which consideration of the relationship between such classifications may be appropriate. Although comparisons will always be difficult because of the difference in, eg, the conditions of employment of the two of two separate groups.

Turning to our own decision in this matter, we must say that the primary considerations influencing our decision have been the comparison of the old and new class standards and the information which was provided to us regarding the way in which the Human Rights Code, and hence its impact upon society, has become more complex over the years. It is our view that this has brought about a substantive change in the level of work assigned to the

positions of HRO 1 and 2. It is our opinion that this change is most appropriately recognized by increasing the salary ranges for these two positions by a factor of 8%, and we so award.

The Board shall remain seized of this matter pending implementation of the terms of this award by the parties.

DATED at London, Ontario, this 29th day of November, 1988.

R. J. Roberts, Vice-Chairperson

"I Dissent Partially" (Partial Dissent Attached)

W. Walsh, Member

"I Dissent" (Dissent attached)

J. Campbell, Member

PARTIAL DISSENT

With respect, in the circumstances, I consider the 8% as too low.

Wm. Walsh

W. Walsh

Dissent

In the matter of an arbitration

Between:

Ontario Public Service Employees Union
(Ventura et al) Complainant

and

The Crown in Right of Ontario
(Ministry of Labour) Respondent

I must register my disagreement with the Board's decision that the new class standards reflect a substantive change in the level of work assigned to the positions of HRO1 and 2.

A review of the old and the revised class standards indicates that the overall duties and responsibilities of HROs have not changed. The positions essentially require the performance of investigative and conciliatory functions related to the promotion and enforcement of the Ontario Human Rights Code. The format of the new class standards, i.e., the use of factorial terminology, while providing a more detailed description of the job requirements, does not indicate a major change in purpose and overall functional responsibility. I also cannot agree with the statement that the impact of the Code and hence its impact upon society has become more complex over the years. While the Human Rights Code may have a higher profile in today's society, that profile has created a greater awareness in the population at large with respect to the prohibited grounds under the Code and the role of the Commission.

..... /2

Rather than adding to the complexity of the job, this awareness produces a better informed public which in turn can facilitate the carrying out of investigation and conciliation duties.

I must also comment on the Board's observations with respect to Section 12(2)(c) of the Crown Employees Collective Bargaining Act and whether that section forbids consideration of comparisons between bargaining unit and excluded classifications. In my opinion, the Act is clear on this point and such comparisons are clearly not permissible.

J. Campbell

J. G. Campbell,

T/0021/88

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(the "Union")

AND:

THE CROWN IN RIGHT OF ONTARIO
(MANAGEMENT BOARD OF CABINET)

(the "Employer")

AND IN THE MATTER OF THE LAW ENFORCEMENT CATEGORY

BOARD OF ARBITRATION:

Barry B. Fisher, Chairperson
Brian Switzman, Union Nominee
George Milley, Employer Nominee

APPEARANCES FOR THE UNION:

Lukin Robinson
Dennis Parker
Bill Tavener
Bob Hebdon

APPEARANCES FOR THE COMPANY:

Susan A. Currie
Walter J. Gorchinsky
Elsie Moolgaokar
Diane Maynard
Joan Chrisford

A HEARING IN THIS MATTER WAS HELD AT TORONTO ON JUNE 19, 1989

DECISION

This is the fourth in a series of interest arbitrations between the parties involving the same two issues.

1. Should the instructors at the Ontario Police College be entitled to the same percentage wage increase as was freely negotiated by the Ontario Provincial Police in their most recent agreement?

2. Should the term of the Collective Agreement continue to be the same as it is now (one year ending March 31, 1989) or should it be brought in line with all the other civil service contracts (therefore to December 31, 1989).

The Union based their entire case on the principle that this Board should follow the previous three awards, usually referred to as the **Scott** award (October 2, 1985), the **Devlin** award (March 30, 1987) and the **Saltman** award (April 11, 1988).

The **Scott** award found that there was a historical relationship between the wage increases granted to the instructors at the Ontario Police College and police officers in the Ontario Provincial Police. He based this historical relationship on two factors:

a) The fact that the Ontario Police College had received a total percentage increase (not compounded) of 85.47% between April, 1975 and April, 1983 and that the Ontario Provincial Police received an increase of 87.52% during the same period;

b) The fact that in 1977 a member of management wrote a letter to the Union in which he stated,

> *As in previous years, given the history of negotiations and the relationship to the Ontario Provincial Police negotiations, there is some merit in awaiting the outcome of the Ontario Provincial Police negotiations, which have not yet commenced.*

Based on this historical relationship, arbitrator Scott awarded the Ontario Police College instructors a total increase of 4.50% compared to the Ontario Provincial Police increase of 4.68%.

In the **Devlin** award she decided that unless the Employer could show a "compelling case to justify adopting a different approach" she felt she should follow the **Scott** award and did so by awarding an overall increase of 5.25% compared to the Ontario Provincial Police increase of 5.46%.

In the **Saltman** award, the arbitrator felt that in light of the historical relationship and the two previous awards, the Employer should demonstrate why this relationship should not be maintained.

She further held that the mere fact that there were significant differences between the job functions and working conditions was not enough as these differences had always existed during the period when the parties freely negotiated their contracts. She said that what would be required would be some evidence of changed circumstances and absent any such evidence she awarded an almost identical increase to that negotiated by the Ontario Provincial Police.

It seems that both the **Devlin** and **Saltman** awards place great emphasis on the precedental value of the **Scott** award, which in turn relies almost exclusively on the existence of a historical relationship between the parties. Little or no comment can be found in any of the previous arbitration awards of any of the usual other criteria that interest arbitration boards look at or are in fact required to look at in accordance with Section 12(1) of the Crown Employees Collective Bargaining Act.

These criteria would include the following:

a) the employer's need for qualified employees [CECBA Section 12(2)(a)];

b) conditions of employment in similar occupations outside the public service [CECBA Section 12(2)(b)];

c) conditions of employment in similar occupations within the public service [CECBA Section 12(2)(c)];

d) the need to establish fair and reasonable terms and conditions of employment [CECBA Section 12(2)(d)];

e) historical relationships between bargaining groups;

f) cost of living **(Re General Truck Drivers and Helpers Union et al and British Columbia Railway Company.)** Unreported award June 1, 1976 (Arbitrator Shime) referred to in Swan, Kenneth P. **The Search for Meaningful Criteria in Interest Arbitration - The Canadian Experience** - Industrial Relations Centre - University of Kingston - Reprint Series No. 41, 1978);

g) productivity (**Re General Truck Drivers and Helpers Union et al and British Columbia Railway Company.** op. cit.)

In fact in this case the Union presented almost no evidence or submissions on any of the above factors other than the historical relationship factor.

The Employer on the other hand presented evidence on the following factors:

a) The fact that the employer was having no trouble recruiting people for the instructor's role even though they seem to take a cut in pay by taking the job;

b) A detailed comparison as to the job functions of an Ontario Police College instructor compared to an Ontario Provincial Police officer;

c) An examination of the similarity in job functions and training between Ontario Police College instructors and other instructors covered in the same Collective Agreement;

d) Evidence as to how the previous negotiating pattern of the employer was sloppy and not well prepared as an explanation as to why the historical relationship occurred in the first place;

e) Evidence of Canada wide wage increases for the general work force.

There is no doubt that predictability is a desirable goal in labour matters. One way of achieving predictability in labour negotiations is to utilize the principle of arbitral precedent, as was done in the **Devlin** and **Saltman** awards.

Kenneth Swan in his work entitled **The Search for Meaningful criteria in Interest Arbitration** (op. cit.) states as follows on page 1:

> *Any discussion of interest arbitration as a mechanism for resolving collective bargaining disputes will inevitably turn to the failure of arbitrators to develop, to date, a generally acceptable structure of meaningful criteria which may be applied scientifically and consistently, and which will produce in general results perceived to be just and acceptable to both of the parties to the dispute and to society at large. The need for the development of a system of criteria is an obvious one; reasoned and principled decisions in previous individual cases can, when related to the issues involved in a current dispute, assist each party in weighing the validity of its own position and that of the opposite party, and in assessing the relative chances of success or failure in any subsequent arbitration proceeding. As the "jurisprudence" thus created builds up, it ought to have a predictive value which will restrain the parties*

> *from taking unreasonable positions at arbitration, and which ought to exert a centripetal force to move the parties closer and closer together. Ideally, predictability ought, in most circumstances, to foster a settlement without the necessity of seeking arbitral resolution of the dispute.*

On the other hand, the doctrine of arbitral precedence in interest arbitrations must be used carefully, especially where the previous cases involve the same parties. In grievance arbitrations arbitrators generally give great deference to previous arbitration awards, and under CECBA, the Grievance Settlement Board has, in effect, adopted almost a court-like model of precedent as set out in the **Blake** award (Chairperson Shime #1276/87). However, in grievance arbitrations if the losing party does not like the award he can attempt to change it at the bargaining table. In interest arbitrations there is no bargaining table. If the doctrine of arbitral precedence is applied too vigorously in interest arbitrations it would lead to the effect that wage patterns or working conditions could *never* change as each subsequent award would increase the pressure on the subsequent interest arbitrator to follow the previous awards. Unlike the courts, there is not even the "safety-valve" of an appeal procedure to relieve the losing party from the losses of the past. If he cannot appeal it, or argue it before a different panel at another time, then he might as well not even try to negotiate, as the result is pre-determined.

This is especially so, like in the situation before us, the issue involves wage increases tied to another group of employees represented by a different union. In this case OPSEU is really saying,

> *Let's not bother talking to the employer because we are simply entitled to whatever the Ontario Provincial Police gets, no more and no less.*

This position was especially clear when the chairman asked the Union if they would be prepared to accept a 21 month term, to which the Union stated they would be but only if there was a clause in the award which stated that their increase in the second year would be the same as that which will be obtained in the future by the Ontario Provincial Police. The Union, in effect, was prepared to let another Union do its bargaining for it and expected the Employer to also sub-delegate their statutory obligation to negotiate a contract.

It may well be that at the time of the **Scott** award the finding of a historical relationship was critical in over to justify the award before the Inflation Restraints Board which, of course, put a cap on wage increases in the Public Service.

It may also have been important that the first one or two awards after the **Scott** award follow the general principles set out in that award, one of which was certainly the desirability of maintaining historical relationships.

However, this does not mean that all future awards, including this one, should continue to give such overwhelming consideration to either previous historical patterns or previous arbitral awards.

There comes a time when the parties are entitled to somewhat break from the past and chart out a new future, based on other valid labour considerations, as outlined above.

That time is now.

This Board therefore finds that it is no longer appropriate that the Ontario Police College wage increase should simply follow the Ontario Provincial Police wage increase because of any historical relationship that existed between the parties but rather the award should be based on the full range of usual considerations, of which, the existence of a historical relationship is but one.

In the course of the hearing it became clear that the Union had not prepared any data or submissions on any issues other than the historical relationship argument and as such was not in a position to provide the Board with the usual statistical and empirical data it relies upon in interest arbitrations.

It was therefore agreed by the parties that in the event this Board found that the award should not be ruled by the Ontario Provincial Police increase, as we have done, the following order should be issued:

1. The parties are to attempt to negotiate a settlement for a period of 45 days following the date of issuance of the award;

2. If no settlement is reached within that time frame then this Board shall reconvene to hear the balance of the submissions of the parties, it being understood that both parties will be free to present new evidence in light of the reasons expressed in this award.

The Board so orders.

Dated at Toronto, this 29th day of December, 1989.

Barry B. Fisher, Chairperson

"I dissent"
Brian Switzman, Union Nominee

"George Milley"
George Milley, Employer Nominee

UNION CONSULTING SERVICES

LARRY ROBBINS
BRIAN SWITZMAN
JOE HERBERT
SANDRA NICHOLSON
DAINA GREEN
WILLIAM WALSH

December 22, 1989

Mr. Barry B. Fisher
Barristers
595 Bay Street
Suite 1200
Toronto, Ontario
M5G 2C2

Dear Mr. Fisher:

Re: Crown in Right of Ontario and O.P.S.E.U.
- Ontario Police College - T/0021/88
[Law Enforcement Category]

I have reviewed the award of my colleagues and with respect I am unable to join with them in their conclusions.

This classification involves 36 permanent full-time Instructors at the Ontario Police College. Needless to say, a group of this size will not, in all likelihood, become trendsetters in a matter such as wages. Rather, it will be a matter of applying the appropriate comparables. That is what common sense labour relations would decree.

Indeed, that is what has governed this situation involving these Instructors for at least the last thirteen years. For that period, by agreement of the parties, and by three successive awards by boards of arbitration, the Instructors have been given increases based upon the increases received by the O.P.P. In the last two awards, both arbitrators have indicated that evidence of changed circumstances would be required before this historical tie with the O.P.P. wage increases could be disturbed.

Now, in spite of no new presentation by the Employer, this Chairman is prepared to jettison this comparison. In reaching his conclusion, he

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makes certain observations upon which I would like to comment.

The Chairman, in reviewing the Scott Award, (which was followed by Jane Devlin and Maureen Saltman) states:

> "(It) relies almost exclusively on the existence of a historical relationship between the parties. Little or no comment can be found in any of the previous awards of any of the usual other criteria that interest arbitration boards look at or are in fact required to look at in accordance with Section 12(1) of the Crown Employees Collective Bargaining Act."

With all due respect, I cannot agree with this observation. Mr. Scott considered the state of the economy of Ontario as presented by the Employer: he looked at other external settlements of the time; he looked at internal comparisons with other wage categories in the O.P.S.; and he looked at the going settlement rate in the private sector. Based on all of these factors, he chose the strongly supported historical tiepoint with O.P.P. as the most influential and determinative factor. Needless to say, the O.P.P. rate is negotiated subject to all of the criteria set out by this Chairman.

Two experienced arbitrators have agreed with Mr. Scott's reasoning. They have followed his approach as being reasonable, consistent with sound labour relations bargaining practices and in accordance with section 12(1) of C.E.C.B.A.

The Chairman also indicates at page 4 of the award that he's of the view that the Union is here seeking, "...to let another Union do its bargaining for it and expected the Employer to also sub-delegate their statutory obligation to negotiate a contract." In my respectful view, this observation fails to grasp the reality that 36 employees are not going to set a pattern. What will be determinative is the issue of who will be

the fair comparable for this group. In essence the Employer here is seeking a comparison to the Administrative Service Category of the O.P.S. (see page 24 of the Employer Brief) while the Union seeks a comparison to the O.P.P.

In other words, using the chairman's reasoning, the Employer wants another bargaining table (the Administrative Service Category) to set the wage rates for the O.P.P. College Instructors.

On questioning by the Union representative, the Employer readily admitted that there wasn't anything different in its submissions to this Board than it had made to the two previous Boards of Arbitration.

Rather than selecting between these two positions, the majority has chosen to reverse the decision of the three previous Boards of Arbitration and directed a further hearing.

It's my concern that should this Board reconvene at that time we will be once again asked to choose between the two comparables that have been put to the three previous Boards of Arbitration. If the Employer wants to make this small category part of the Administrative Services Wage Category, then it has other means to acheive that end. In all due respect, I do not think that this Board of Arbitration ought to allow itself to become the cat's paw of the Employer.

Thus in all of the circumstances I would have awarded this wage category the same wage increases as those received by the O.P.P. For this reason, I must, with respect, dissent from the majority decision.

Very truly yours,

Brian Switzman

Brian Switzman
BS/lk

T/0039/88

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, R.S.O. 1980, c. 180

AND IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(the "Union")

AND:

THE CROWN IN RIGHT OF ONTARIO

(the "Employer")

AND IN THE MATTER OF THE GENERAL OPERATIONAL SERVICES CATEGORY

BOARD OF ARBITRATION:

D. Fraser	Chairperson
Janet Solberg	Union Nominee
Jacqueline Campbell	Employer Nominee

APPEARANCES FOR THE UNION:

Frances Lankin	Negotiator
Joyce Hansen	Researcher

APPEARANCES FOR THE EMPLOYER:

Eileen Hipfner	Staff Relations Officer Human Resources Secretariat

HEARING IN THIS MATTER WAS HELD AT TORONTO ON AUGUST 24, 1989

This matter involves the determination of wage rates and other matters for approximately 3,300 employees in the General Operational Services Category of the Government of Ontario. That Category is one of eight occupational categories which bargain separately for wages. It includes employees in four major service areas: personal service; cleaning, caretaking and security; supply; and agricultural support. The two largest service areas are personal service, and cleaning, caretaking and security, which together account for approximately 78% of the category.

The parties agree that the collective agreement containing the increases to be awarded herein shall be effective from January 1st, 1989, to December 31st, 1989. They have further agreed that increases shall be retroactive to January 1st, 1989, shall be payable on a full or pro-rata basis to all employees who are or were in the Category and shall apply to all paid hours including overtime worked.

The matters in dispute involve salaries, pension rate increase protection, implementation, interest on retroactivity payments, and retroactivity payment by separate cheque. We will consider these matters in turn.

Salaries

The union has proposed an increase of $1.75 per hour across the board for all rates in all classifications in the Category. The Employer has costed that proposal together with a pension request as constituting an increase of approximately 15.3%. In support of its proposal, the Union relies on a number of factors including a special case argument for the entire Category, the

situation of females in the Category and its relationship to a low-wage ghetto and the poverty line, growth in the Ontario economy, wage rates and settlements in the public and private sectors in Ontario and elsewhere, growth in productivity, changes in the Consumer Price Index, and other matters. However, the union's principle case rests on the submission that 70% of the Category, or 97% of the Category when historical relationships are heeded, comprises a special case when compared to similar occupations outside the public service. That submission is founded on a factor to be taken into account by this board, found in the Crown Employees Collective Bargaining Act. Section 12(2)(b) of that Act provides that a relevant factor for consideration is:

> "the condition of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant".

The union has proposed that in view of the reach of the special case throughout the Category, and in view of wage rates in similar occupations outside the public sector, an increase of $1.75 across the board for the Category is appropriate.

The Employer has proposed that the wage increase be within the range of settlements in 1989 for four other wage categories in the Ontario public service. Absent adjustment for special cases, those increases average out to 5.89% for Administrative Services, 5.916% for Scientific and Professional Services, 5.94% for Technical Services, and 6.022% for Office Administration. In support, the employer relies on a number of factors, including the economic climate as reflected by settlements in the private sector, internal relationships, recruitment and retention, and other matters. With respect to the union's submission respecting a special case for the Category for catch-up,

the employer has relied on settlement levels in the private sector and elsewhere, rather than the comparable wage rates provided by the union.

We have reviewed all of these factors in detail. Submissions in respect of many of them have been analysed in depth in previous interest awards. We do not propose to repeat or add to those lengthy considerations in detail, but will indicate some of the major elements that led to our result.

The special case approach has been used by the parties for some time, and we accept it as an appropriate process provided, of course, that the case is proven. Furthermore, the evidence generally supports the union position that it is appropriate to view the entire Category as a special case, given the reach of the individual special cases which we have referred to above. These are not the difficult considerations in this case, which is whether the data prove that catch-up is merited, in the light of other factors we have considered.

The special case is based on a comparison of seven benchmark classifications within the General Operational Category, which the union submits "are most representative of the category and which have easily identifiable outside comparisons". They are (a) Cleaner 1-3; (b) Buildings Caretaker 1, 2, 6; (c) Cook 1-3; (d) Laboratory Attendant 1, 2; (e) Security Officer 1-3; (f) Clerk, Supply 1-7; and (g) Agricultural Worker 1-4. The data indicate that these benchmarks include 75% of the population of the Category, which is in excess of the 70% submitted at the outset. The inclusion of historically-related classifications, such as Cleaner, Office Buildings, Hospital Housekeeper 1 and 2, and Laundry Worker 1-5 in the Cleaner 1-3 benchmark classification, results in benchmark and historically-related

classifications totalling 99.2% of the Category. The inclusion of some of those historically-related classifications may be an arguable matter, but we conclude overall that the benchmarks are well-representative of the entire Category.

Benchmark (a) Cleaner 1-3 was compared in respect of wage rates with C.U.P.E. and S.E.I.U. hospital rates in Ontario, with municipal rates in Ontario, with Ontario and Toronto Hydro rates, and with rates at General Motors in Oshawa. Contracts in effect at various times in 1988 and 1989 were examined for that purpose, and the resulting wage differentials range from 9.5% to 45.1% in excess of rates in the Category. There were substantial submissions and other material in support of these comparisons, which we shall not replicate here. We would note, however, in evaluating the material here, as also below for the remaining six benchmarks, that wages in Toronto, and wages paid by municipalities and Hydro must be viewed with caution, as the data indicate that they reflect to some extent the higher end of the scale.

Benchmark (b) Buildings Caretaker 1, 2, 6 was compared with wage rates for boards of education and municipalities in Ontario, and Toronto Hydro. Again, as in all cases of comparables for all benchmarks, contracts in effect at various times in 1988 and 1989 were examined for that purpose. The resulting wage differentials range from 9.9% to 56.3%.

Benchmark (c) Cook 1-3 was compared in respect of wage rates in the Federal government and Ontario Hydro, with differentials ranging from 14.4% to 39.8%.

Benchmark (d) Laboratory Attendant 1, 2 was first analysed in terms of a proposed historical relationship with Medical Laboratory Technologist in the Ontario public service. That latter classification is the one with which the Laboratory Attendant works most closely, and from which the Laboratory Attendant frequently receives instruction. A comparison of 1984 to 1988 years shows a comparative historical wage relationship increase of 8.4% for the Medical Laboratory Technologist. A comparison of the Benchmark was also made with Hospital Technicians in O.P.S.E.U. hospitals in Ontario, showing wage differentials of 19.9% to 31.6% in favour of the latter group.

Benchmark (e) Security Officers 1-3 was compared with counterparts in the federal House of Commons, Ontario Hydro, and the Liquor Control Board of Ontario, with wage differentials ranging from 8% to 54.2%.

Benchmark (f) Supply Clerk 1-7 was compared with wage rates of counterparts in Ontario municipalities and boards of education, Ontario and Toronto Hydro, the Liquor Control Board of Ontario, General Motors of Oshawa, Continental Car, Stelco and Inco. The resulting differentials ranged from 10.5% to 55.1%.

Benchmark (g) Agricultural Worker 1-4 was reviewed by taking the Agricultural Worker I level, as it is the working level, and comparing it with the Gardener working level in Ontario municipalities, a limited number of Ontario hospitals, boards of education, and universities (three in each case), and General Motors of Oshawa. The resulting differentials ranged from 7.7% to 34.6%.

To support the comparisons to the various Benchmarks, the union described similarities between Category classifications and the outside comparables. Working level in one job function was compared to a similar working level in another job function, principal tasks were compared, or other primary similarities were described.

Neither the data on differentials, nor the comparison of job functions were seriously challenged by the employer, which rested its case largely on current settlement levels, rather than wage disparities (as we have noted earlier).

What weight should this extensive data be given? There is no doubt of its relevance as a factor, as we noted in our earlier reference to C.E.C.B.A. Comparable data from both inside and outside the Ontario public service has had a mixed reception. In an interest award for the General Operational Services Category dated 16th September 1980, Chairman Brandt found such data from a Civil Service Commission Survey in 1978 to be unreliable because it was out of date and not a "precise instrument for matching jobs in the public sector against other jobs" (pp 16-17). In an interest award for the same Category dated 11th December 1980, Chair Betcherman suggested that special case adjustments based on internal equities, require job evaluations to be done first (at p. 6). In an interest award made the next year for the same Category (dated 10th October 1985), Chairman Kennedy commented on external comparisons of wage rates provided by the union. In so doing, he said (at p.6) that:

> "On the evidence and arguments made to us, we would find that there is one significant additional factor that was not present in the Administrative Services case, and that relates to the external comparisons of wage rates provided by the Union. While those comparisons are in no sense precise, they are in our view sufficient to give a general indication that the wages in this category are

> falling behind the wages paid to comparable employees elsewhere."

In the present case, the benchmarks are well-chosen and representative and the comparables represent similar working levels of jobs in their essence and are taken from a comparatively wide background of employees outside the public service. Neither the comparable jobs nor the wage differentials they produce have been seriously challenged by the employer, and it is our view that they represent an appropriate exercise which gives a reliable general indication that wages in this Category are significantly below wages paid in comparable jobs elsewhere.

The comparison is, however, imprecise in some respects and not completely reliable, although it would be difficult to see how the union could do a significantly better job within the context of the constraints of an interest arbitration. In some cases, the evidence of job similarity is not wholly satisfactory, nor are the outside employers chosen in every case, the most appropriate ones. However, these and other concerns all combine to require that the final results be viewed with some caution, in terms of the total reach of the disparities. They do not affect the reliability of our general conclusion, which is that the Category is significantly behind when compared to the "conditions of employment in similar occupations outside the public service". The case has been made, and we give it substantial weight as a factor.

There are other factors which need to be brought in. We also give substantial weight to settlements in the four other wage categories in the Ontario Public Sector, as they have been freely negotiated, as they represent a collective bargaining response to many factors which are also before us, and as

they are close to home. Settlements in other sectors have been reviewed and provide general guidelines for us, but they are not quite as determinative as the factors reviewed above. Growth in productivity is also a factor, as is change in the C.P.I., but those are subsumed in some degree in the settlements we have reviewed.

Of the further factors we have considered, we would comment in some detail about recruitment and retention. They are not simple factors to deal with. There is some evidence from the employer that there is no particular difficulty in recruiting and retaining employees in the Category, but the submissions on this are a relatively new matter, and the data must be regarded with care. In particular, we would note that there are problems with retention data. For example, exit surveys (to find reasons for leaving) are an important element of any submission on the validity of retention data, but, as the union has pointed out, reasons given for leaving will very often be masked for unspoken reasons, such as a desire not to "burn one's bridges". We can, however, conclude that recruitment and retention is not a significant problem in the Category, as it has, perhaps, been in other categories (such as those including Registered Nurses).

The effect of such a conclusion is limited. Where recruitment or retention is a problem, the response is reasonably straight-forward. Benefits are increased until a satisfactory recruitment or retention percentage is achieved, or other changes are made involving such things as better job advertising, recruitment bonuses, or enhanced working conditions.

But where recruitment or retention is not a problem, the opposite response, in some form or other, may not be appropriate for a category in the

Ontario Public Service. The factors provided in CECBA, section 12(2), illustrate why. Section 12(2)(a) refers to the need for qualified employees. However, the following subsections refer to such matters as conditions of employment in similar occupations, maintaining appropriate relationships between classifications, and fair and reasonable terms and conditions relative to such things as qualifications, work performed, responsibility assumed, and so on. Those latter factors are almost all comparative factors, in one sense or another, making comparisons with other occupations or classifications, or comparing terms and conditions with such things as work performed or responsibility assumed. So there is a large, inter-related web of factors used to suggest an appropriate wage level which have little or nothing to do with recruitment or retention on their face. It would be an unusual and unbalanced result, if the results of all such mandated comparisons were then down-graded, or reduced in effect, because, as found in section 12(2)(a), "the needs of the Crown and its agencies for qualified employees" was being easily met. Such certainly could be done, but the circumstances would have to be quite unusual for the other "comparable" factors, in effect to be given less weight.

We think that in view of the size and diversity of the occupations in the Ontario Public Service, that a factor of recruitment and retention would be most significant when it also enters the web through the "comparable" route. In other words, if there is a downturn in the economy reflected, for example, in conditions of employment outside the public service, or in other classifications, it may be that ease of recruitment and retention changes the comparable conditions of employment to the extent that those changes in turn are seen as affecting conditions of employment in the category in question. We would conclude for these reasons that ease of recruitment and retention is certainly a factor to consider as we have here, but its weight depends in large

part whether it has affected the large list of other comparable factors in the legislation. Evidence of that will be found directly in such things as comparable wage and settlement data. Thus, in conclusion, difficulties in recruitment and retention may produce a direct increase in benefits and working conditions. In a process of wage determination weighed heavily to comparables, ease of recruitment and retention must be viewed in light of the comparables, and it will have most effect when it is reflected by them.

Of all the matters considered, both conditions of employment in similar occupations outside the public service, and settlements in the four other wage categories have been given substantial weight. The economic climate and other settlements have been given weight, and a number of other factors have been reviewed, including recruitment and retention.

We conclude that a special case that a catch-up increase for the entire Category has been made which should be above the average range of settlements in the Ontario Public Service, but the case should be modified in view of certain of its characteristics which we have noted, in view of the range of settlements within and without the public service, and the other factors referred to. For these reasons, we award an increase of $1.30 across the board in the Category for all classifications and rates effective January 1st, 1989, for all paid hours including overtime worked for all employees in the General Operational Services Category in 1989.

Pension Rate Increase Protection

The union has requested a 1% increase in wages to protect such wages from any increase in the employee's contribution to the pension fund. In view of

the fact that this issue has been raised in all the wage categories negotiated to date, but forms no part of any of the four negotiated settlements, we decline to make an award on this matter.

Implementation

The union has requested that we order this award to be implemented within thirty days of its date. The employer has responded by noting difficulties in the implementation of an arbitration award, and proposed that the board order that the employer endeavour to implement the board's award within fifty days of receipt, but in any event no later than sixty days of receipt of the award, and that the order be made a term of the agreement. We adopt the reasoning of prior boards on this matter, and order that the employer endeavour to implement this award within fifty days of receipt, but in any event no later than sixty days of its receipt, and we further order that this requirement be made a term of the agreement.

Interest on Retroactivity Payments

The union has requested that the board order interest to be paid on the wage retroactivity to January 1st, 1989, and it has submitted a statistical summary prepared by the Ontario Ministry of Labour respecting delay caused by compulsory arbitration. In view of the special circumstances and nature of this case, we decline to make an award on this matter.

Retroactivity Payment by Separate Cheque

The union has asked that we require retroactivity to be paid on a separate cheque, as the majority of employees prefer this method. The employer has responded that such payments are separated out in any event in the information on the cheque stubs in which they are included, and that good reason has not been given for the requirement of separate cheques. We are of the view that this matter has not been thoroughly enough explored at this time, and decline to make such an award.

Dated at Ottawa
this 15th day of January, A.D. 1990.

D. Fraser, Chairperson

Janet Solberg, Union Nominee

"I dissent" (Dissent attached)

Jacqueline Campbell, Employer Nominee

DISSENT

I strongly disagree with the majority decision of this Board.

While the award makes reference to careful consideration of all the legislated criteria, in my opinion, undue weight has been given to the external comparable wage data. The recruitment and retention information provided by the Employer, as well as the pattern of settlements, both within and outside the Ontario Public Service, should be given equal consideration in determining the appropriate level of increase -- even more so given the nature of the comparable data provided by the Union, which to quote the award, "must be viewed with caution as the data indicate that they reflect to some extent the higher end of the scale".

This award provides for an increase which is approximately 50% above the going level of settlements in the OPS and substantially higher than those achieved in other public sector and private sector jurisdictions. It is beyond the realm of reasonableness even if some form of catch-up can be justified.

Jacqueline G. Campbell,

Employer Nominee

T/0042/88

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE

CROWN EMPLOYEES' COLLECTIVE BARGAINING ACT

R.S.O. 1980 c.108 s.10

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY MANAGEMENT BOARD OF CABINET

the Employer

AND:

THE ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

the Union

RE: CORRECTIONAL SERVICES CATEGORY

BOARD OF ARBITRATION:		Ms. Jane E. Emrich	Chair
		Mr. J.R. Scott	Employer Nominee
		Mr. B. Switzman	Union Nominee
APPEARANCES:	For the Employer:	Ms. Lynn Horton	Human Resources Secretariat
		Ms. Miriam Irwin	Human Resources Secretariat
		Ms. Pat Burns	Health
		Mr. Doug Milic	Community & Social Services
		Mr. W.J. Gorchinsky	Human Resources Secretariat
		Ms. E. Moolgaokar	Human Resources Secretariat
	For the Union:	Mr. Terry Baxter	Negotiator
		Mr. Luken Robinson	Research Officer
		Mr. Mike Highley	Region 4 O.C.D.C.
		Mr. Bob Maloney	Region 2 B.C.C.
		Mr. Paul Lane	Region 1 E.M.D.C.
		Mr. Len Hupet	Region 7 F.F.J.
		Mr. Larry Cripps	Region 3 L.J.
		Mr. Ole Thomsen	Region 6 S.S.M.J.

Hearing held at Toronto on the 10th day of October, 1989

The board of arbitration was constituted pursuant to the Crown Employees' Collective Bargaining Act, R.S.O. 1980 c.108 s.10 to decide the matters in dispute between the parties falling within the scope of collective bargaining in respect to the Correctional Services Category. The issues put before the Board for resolution include the quantum of wage increase, retroactivity, interest and implementation.

The Correctional Services Category is comprised of twenty three classifications covering approximately 3500 classified employees, and a growing number of unclassified staff. The classifications represent jobs which pertain to the custody, control, care, rehabilitation and recreational programming for inmates of provincial correctional facilities. The average salary for the Correctional Services Category as at December 31, 1988 was $16.33 per hour or $34,076 per annum. Salary rates range from a low of $13.02 per hour for Trade Instructor 1 to $20.16 at the maximum rate in the range for Trade Instructor 3. Employees classified as Correctional Officer 2 (CO2) represent approximately 79% of the category population. As at December 31, 1988, the salary range for the CO2 classification was $14.42 per hour (minimum) to $16.75 per hour (maximum). The Ministry of Correctional Services is responsible for the administration and staffing of 27 maximum security jails, 9 detention centres which provide maximum and medium security, as well as treatment and training units or camps which provide a variety security levels. Most Correctional Officers 2 (CO2s) work in a maximum security setting.

The parties met in bargaining on four occasions on December 9, 1988, January 11 and 12, 1989 and on February 16, 1989. The parties met with a mediator on April 6, 1989, but were unable to effect a resolution at that time. A further meeting was held on August 30th and a tentative agreement was reached on August 31, 1989. The agreement provides for a one year term effective January 1, 1989 with an increase to all rates and ranges of $1.06 per hour. This represents an increase of approximately 6.5% on the average salary rate for the category. The Employer agreed to implement the increases retroactively from the effective date within three full pay periods following official notice of ratification by the Union to the Employer. In fact, the union membership rejected the settlement on the ratification vote by a large majority of eligible voters. The Union notified the Employer of the rejection on September 27, 1989 and the parties acted forthwith to constitute this board of arbitration.

While the parties reviewed extensive authorities as to the scope of review in circumstances where there is a rejected memorandum of settlement, there was little difference between them as to the principle to be distilled from these authorities. Essentially, the terms of an unratified settlement are treated by the majority of arbitrators as admissible, relevant evidence giving rise to a rebuttable presumption that the agreed terms represent a fair and reasonable resolution of the matters in dispute. Thus, an unratified settlement is not treated as conclusive of the dispute, lest the democratic participation of union members, in the approval or rejection of a contract, be eclipsed. However, where the parties have been represented in negotiations by astute and seasoned personnel, as these parties were, the

terms of the tentative settlement should "in the absence of useful evidence to the contrary, be treated as very persuasive evidence of what constitutes a fair and reasonable settlement of the matters in dispute". See T/1/6 - Crown in Right of Ontario (Management Board of Cabinet) and OPSEU, Maintenance Services Category, 1980, G.J. Brandt, at p.10.

It is now trite to say that the task of interest arbitration is to replicate the results of voluntary collective bargaining. To that end, the Board is mandated by s.12(2) to consider relevant factors including those factors identified in subsections (a) to (d) inclusive. Thus in assessing whether the tentative settlement is justified, the parties put before the Board evidence pertaining to the general economic climate for the relevant time period, levels of settlement for the time period generally in Ontario for the public and private sectors, wage increases obtained by other categories in the public service historically and currently, as well as evidence of wage increases pertaining to occupations alleged to be comparable, both historically and currently. In addition, the Union made lengthy submissions as to special factors affecting the Correctional Services Category. In particular, the Union asked the Board to consider and give weight to historical and current comparisons to wage levels for Ontario Provincial Police Constables and for federal Custodial Officers. The Union contended that the inmate population has increased rapidly in numbers and changed in nature with the number of drug-related and violent offenders increasing. In addition, the Union pointed out that job requirements have evolved to include rehabilitative and counselling aspects to the custodial function. The Union referred the Board to the Stellman Report of February,

1986, a paper by Mr. Picard, a Correctional Officer 2 at Guelph Correctional Centre, which reviews a 1987 study, a 1984 study published by the Ministry of Correctional Services and an American study into job stress of correctional officers dated March, 1982. The gravamen of the Union's submissions was that correctional officers undergo significant job stress in the face of deteriorating working conditions linked to increased security risks and overcrowding of inmate populations.

Furthermore, the Union argued that although this Board has no jurisdiction over pension reform, since the Employer was planning to increase the rate of employee contribution to pensions by 1% commencing January 1, 1990, and since the early retirement provisions in the pension plan were less favourable than for federal custodial officers, as well as provincial police and firefighters, these discrepancies and costs should be offset by a wage increase beyond that agreed in the tentative settlement.

Turning to the evidence pertaining to the general economic climate within which the parties were bargaining, the Board notes that in Ontario the economy during 1989 continued to enjoy some growth in its gross domestic product and relatively low levels of unemployment. The Union made thorough and well-documented submissions as to the recovery of Ontario's economy since the 1982-83 recession, emphasizing data which showed increased productivity of Ontario's public servants following substantial cuts in staffing, and increases in the value of government services since the recession. The Board would not disagree that all categories of public servants deserve a fair and reasonable rate of remuneration where a general increase in productivity is shown.

The parties put before the Board data concerning levels of wage increases in the public and private sectors, both across Canada and in Ontario for the period 1983 to 1989. From this data, it is apparent that up until 1988, the average rate increases for the Correctional Services category from 1984 to 1986 exceeded the Consumer Price Index (CPI) for Ontario but lagged behind the CPI rate for Ontario in 1987 and 1988 (see Table 3 and Table 5 at p.13 and p.17 of the Employer's brief). In 1988, the average rate increase and the base rate increase (COl level) was 4.6%, whereas for agreements without COLA in Ontario covering 200 or more employees, the annual rate of increase to base wage rates in the public sector was 4.8% (see Table 1, p.42 of Union's brief). The comparable figure for private sector agreements was 5.1%.

Data published by Labour Canada and the Ontario Ministry of Labour show a marked rise in the level of wage increases in 1989, even from the first quarter to the second quarter. This parallelled an increase in the Ontario CPI from 5.7% in the first quarter of 1989 to 5.9% in the second quarter. At the time of the hearing, data from Labour Canada for Ontario wage settlements were available for the first and second quarters of 1989, and for the first quarter only from the Ontario Ministry of Labour. Since the bargaining context for these parties is Ontario, the Board finds the Ontario data is most relevant. In tabulated form and updated for the third quarter of 1989, the level of wage increases in Ontario are as follows:

Labour Canada - Collective Bargaining Review, p.29

Table X
Average Annual Increase in Base Rates
by Major Jurisdiction

	1989		
	1st quarter	2nd quarter	3rd quarter
All Industries (Canada-wide)	4.3%	5.1%	5.9%
Ontario	5.3%	6.7%	6.6%
Agreements without COLA			
Public Sector (Canada-wide)	4.2%	4.9%	6.3%
Ontario	5.4%	6.7%	6.9%
Private Sector (Canada-wide)	4.6%	5.5%	4.3%
Ontario	5.2%	6.4%	4.9%

Ontario Ministry of Labour
Wage Rates - Collective Bargaining
Agreements covering 200 or more Ontario workers

	1989		
	1st quarter	2nd quarter	3rd quarter
All agreements	5.3%	5.4%	6.1%
Public Sector	5.5%	5.4%	6.6%
Private Sector	5.0%	5.3%	4.1%
Agreements without COLA	5.6%	5.5%	6.6%
Public Sector	5.6%	5.4%	6.7%
Private Sector	5.8%	6.2%	6.1%

From these data and the submissions of the parties, the Board finds that on the information available to the parties at the time they were bargaining, an increase of 6.5% on the average wage rate for the category,

seemed comparable or favourable compared to settlements obtained on base rates for the public sector in Ontario during the early part of 1989. Furthermore, this rate of settlement also seemed favourable compared to the percentage increases agreed in wage negotiations in four of the other eight categories in the Ontario public service. These rates of wage increases in the early portion of 1989 were as follows:

	General Wage Increase	Total Cost
Administrative Services	5.89%	5.89%*
Office Administration	6.022%	6.077%
Scientific & Professional Services	5.916%	6.362%
Technical Services	5.94%	5.940%

At p.47 of the Union's brief, it is pointed out that the average annual wage increases for the years 1983 to 1988 for the eight Ontario public service categories was 34.3%. At p.17 of the Employer's brief, the actual category increases are tabulated for each category from 1984 to 1988. From this table, it is apparent that the Correctional Services Category had the highest total of percentage wage increases of 32.82, which compounded is 37.22% over the relevant time period. Review of the foregoing data supports a conclusion that the wage increase proposed in the tentative settlement was comparable to the level of wage settlements generally in Ontario for the first part of 1989 for the public sector. Furthermore, the past history and current increase of 6.5% proposed by the Employer would continue to place this category in a favourable position in respect to wage settlements negotiated by the other categories of the Ontario public service prior to the date of the hearing.

However, the Union drew the Board's attention to thirty-five other wage settlements between a variety of employers and unions for the 1989 and 1990 time period. Twenty of these settlements pertained to municipal police officers in Ontario. All but three of these agreements provided for increases of 7.0% or more. Furthermore, it is apparent from third quarter data, that wage settlements in the public sector in Ontario in agreements without COLA were 6.7% according to the Ontario Ministry of Labour and 6.9% according to Labour Canada. Thus, a settlement at a level of 6.5% (6.33% on the CO2 end rate) appears to fall behind the prevailing trend in 1989. Nonetheless, without figures available for the average for the entire year for 1989, and given the primary position this category enjoys in respect to wage settlements reached relative to the other Ontario public service categories, a 6.5% increase does not necessarily seem misguided in light of relevant data.

The Union argues that in addition to a prevailing trend of wage increases in excess of 6.5%, the Board should consider as relevant and weighty to wage determination, special factors pertaining to this category - namely wage comparisons to Ontario Provincial Police and federal custodial officers, the increased productivity and workload borne by this category, changing job content, and the high rate of sickness and accidents, which was characterized as an indicator of extreme stress and deteriorating working conditions for these employees. The Board turns first to consider comparisons between the wages of this category to those of constables in the Ontario Provincial Police and of federal custodial officers.

In respect to a comparison with Ontario Provincial Police, the Union traced the history of this issue from the report of a Royal Commission on

the Toronto Jail and Custodial Services in 1978 by His Honour Judge Barry Shapiro, through the arbitration awards by Messrs. Kruger (1982), Kates (1984), Teplitsky (1985), and Brunner (1986). Whereas government officials in the late 1970's and early 1980's accepted the legitimacy of a link between wage levels of these groups, this position since has been repudiated by the Employer. Mr. Teplitsky heard considerable evidence and argument on this issue in 1985. Although he recommended in an interim award that the parties conduct a job evaluation study to explore comparability, he rejects such a study as being useful in his final award at p.2. At p.3 he reaches the following conclusion:

> Having studied the briefs and having heard the evidence of the witnesses, I am satisfied that correctional officers are not comparable to O.P.P. officers in terms of the nature of the principal duties performed by each group. Although both groups work in the administration of justice in the province, the principal functions of the O.P.P. constable are to prevent crime and to apprehend criminals. On the other hand, the principal functions of correctional officers are to prevent prisoners from escaping, to direct their activities within confinement and to aid in their reformation. The skills required for each set of duties are quite different. These groups are not comparable so as to invoke the "equal pay for equal work principal" ... I recognize that comparability in interest arbitration is also used to describe a situation where, although the duties of the two groups are different, it has been determined that the value of their work is approximately the same ... There has been no suggestion that the work of the correctional officer is equal or approximately equal in value to that of the O.P.P.

Having rejected a link to O.P.P. rates on the basis of equal pay for equal work and on the basis of comparable value, Mr. Teplitsky went on to find that federal correctional officers' wage rates were relevant and directly comparable. At p.5, Mr. Teplitsky concluded that he should achieve

approximate parity with federal correctional officers. His rationale for doing so is given at p.4:

> Of considerable significance is the fact that there is a large group of employees in the federal sector, namely custodial officers, who are directly comparable with correctional officers. For all practical purposes they do the same work. Their rates vary from minimum and medium security institutions to maximum security institutions. In Ontario there is only one rate. Some of the Ontario institutions in my respectful opinion are the equivalent of the maximum security institutions federally and may provide working conditions even less desirable. Rather than introduce a two-tier wage scale in Ontario, I have taken the federal rates and chosen the medium between the minimum and medium and maximum. I have naturally increased this rate by 3% to reflect a presumed 1985 increase.

Before this Board, the Employer explained that the method employed by Mr. Teplitsky was to award the average of the end rates for a federal COF1 and COF2 as the end rate for a provincial CO2. The Union maintained that Mr. Teplitsky averaged the rates of COF1, COF2 and COF3. In fact, at that point in time, Mr. Teplitsky's method happened to yield an hourly rate that brought these employees closer to federal rates and represented a $4,000/annum differential to O.P.P. rates.

In 1986, the parties arbitrated their contract issues before Mr. Brunner and again presented evidence and argument on the issue of whether the salaries of correctional officers should be substantially the same as those paid to constables in the Ontario Provincial Police. At p.5, after adverting to the conclusions reached by Mr. Teplitsky excerpted above, Mr. Brunner reached the following finding:

> Having considered the matter once more in light of the briefs that were presented by both parties, we have nevertheless reached the conclusion that the opinion expressed by the Teplitsky Board was correct and should not be departed from.

> That Board also stated that there should be "approximate parity" as between Correctional Officers (Ontario) and Custodial Officers (Canada).

The parties put before Mr. Brunner considerable evidence comparing the job functions and job descriptions. Although declining to comment upon whether Mr. Teplitsky had achieved approximate parity in 1985, Mr. Brunner concluded at p.6:

> ... we had the benefit of a very thorough comparison between the various job classifications at both the provincial and federal levels which has been of great assistance to us ... Similarities and differences do exist between the two systems but we nevertheless are of the view that Custodial Officers do have "similar occupations" to that of Correctional Officers and accordingly their remuneration is relevant to the questions before us.

Mr. Brunner then proceeded to award a 5% increase effective January 1, 1985, and 4.5 increase effective January 1, 1987. The effect of these increases, we are told by the Union, was to place the hourly rate of the provincial CO2 closer to the average of a federal Custodial Officer 2 and Custodial Officer 3.

As is apparent from Table 7 at p.24 of the Employer's brief, it is apparent that with the voluntarily agreed increase of 4.599% in 1988, the hourly end rate of a provincial CO2 ($16.75) exceeded the average of the end rates of federal COF1 and COF2 ($16.47). Furthermore, it is apparent from this Table that the rates of Ontario correctional officers exceed rates paid for working level correctional officers in other provinces by a substantial margin. However, the Board is prepared to give greatest weight to the wage history of these parties in Ontario, and the comparability to federal custodial officers established by the Teplitsky and Brunner awards, which was followed in voluntary settlement by the parties themselves in 1988.

In 1989-90, the federal custodial officers' classification structure has been undergoing significant revisions to job content and salary scale. The salary progression has obtained an additional step at the maximum. At pp.69-71 of its brief, the Union sought to persuade the Board that the appropriate end rate to which a provincial CO2 rate should be compared is the end rate for the federal COF4 and LUF1 of $19.42 per hour, based on similar working conditions and job functions. However, in seeking an increase of $2.25 per hour, it is apparent that the Union for this period would be content with parity to the end rate of $19.00 per hour of a COF3. Other than filing job descriptions as exhibits, the comparison of the evolved federal classification structure to the provincial classification structure was not further elaborated upon through direct evidence. The parties do not dispute that most, although not all, provincial CO2s work in maximum security settings, and that most of the employees in this category are CO2s. The end rate of CO2s applying the $1.06 increase contemplated by the tentative settlement would be $17.81 per hour. When compared to the rates for federal custodial officers effective February 1, 1989, this rate is substantially below the end rate for COF1, which represents hiring level correctional officers who work only at minimum and medium security level institutions. Neither Mr. Teplitsky, Mr. Brunner, nor the parties themselves in 1988 equated the CO2 end rate to the end rate of the federal COF1 rate. Indeed, the expired provincial CO2 hourly end rate of $16.75 per hour was greater than the hourly end rate for a federal COF2 of $16.67 as at January 31, 1989. At p.71 of the Union's brief, the end rates effective February 1, 1989 are set forth for federal correctional officers as follows:

	Classification Level	Type of Institution	Hourly End Rate (effective Feb 1/89)
(Hiring level)	CX-COF-1	Minimum, Medium	$17.96
(Hiring level)	CX-COF-2	Maximum	$18.38
	CX-COF-3	Minimum, Medium	$19.00
	CX-COF-4	Maximum	$19.42
	CX-LUF-1	Minimum, Medium, and Maximum	$19.42

Since promotion is within the same type of institution, an officer at a minimum or medium security institution would be hired at the COF1 level and could be promoted to a COF3 level. Similarly, in a maximum security institution, an officer would be hired as a COF2 and could be promoted to COF4. Thus, using a simple average of either the COF1 and COF2 end rates or a simple average of COF1, COF2 and COF3 end rates would weight the result toward hiring level classifications. The simple average of the 1989 rates for COF1, COF2 and COF3 end rates would be $18.45 per hour. The Union argued that since most provincial CO2s work in maximum security settings, discharging custodial as well as rehabilitative functions, that a more appropriate comparison would be to the COF4 and LUF1 end rates. However, in the absence of further elucidation in direct evidence clarifying the effects of the evolving federal classification structure, and which would assist in the comparative evaluation of the levels in the federal and provincial classification systems, the Board would prefer to achieve a result which is more in keeping with what has been awarded in the past and which the parties emulated in voluntary settlement in 1988.

Having regard to the increased rates of settlement in the Ontario public sector in the latter portion of 1989, and bearing in mind that such wage increases have outstripped increases in the CPI in recognition of the increased productivity of the economy, but especially because of the approximate parity accorded to salary rates for provincial and federal correctional officers which has been recognized by a line of arbitral authority and followed by the parties themselves in 1988, the Board concludes that an improvement upon the wage increase accorded by the tentative settlement is warranted.

The Board follows the lead set in T/37/88 - OPSEU and Crown in Right of Ontario (Management Board of Cabinet) and finds that it is not within the purview of its jurisdiction to consider matters of pension reform. In any event, any increase in contribution rate does not take effect until 1990, and therefore cannot be considered as a relevant factor to wage determination for the 1989 year.

Finally, the Board is not unsympathetic to the frustration and desperation felt by correctional officers in respect to their working conditions. This was a recurrent theme throughout the Union's brief. Furthermore, the Employer did not take issue with submissions by the Union that the inmate population has become more difficult to handle due to factors such as overcrowding, as well as increases in drug-related offenders and violent offenders. Finally, the Union advised the Board that the proportion of first-time offenders has been increasing steadily over the past decade. The significance of such an increase is explained at p.79:

> The provincial system houses - if that is the right word - all prisoners prior to sentencing. Many of them are in for the first time, and for all of them a great uncertainty as to their future weighs on them. This

> makes them more difficult to handle than prisoners transferred to the appropriate institutions after sentencing, which for sentences of two years and more involves transfer to Federal penitentiaries.

However, the Board does not accept that a wage increase should depend upon or that it could ameliorate the underlying problems. Evidence presented by the Employer would seem to suggest that there has not been any difficulty recruiting new correctional officers, whether as classified or unclassified staff, to replace those whose departure might be attributed to job stress. Undoubtedly, the strains experienced in the corrections system cannot be alleviated by means available to this Board in any significant way.

On the evidence before it, the Board is not able to undertake a reliable comparison of job rates between the provincial corrections officer classification structure and the evolved federal structure. This being the case, the Board has decided to adopt an approach which achieves a result approximating the method adopted in the prior awards but which seeks to mitigate the cost impact upon the Employer of effecting an improvement to the tentative settlement reached at the end of August.

Accordingly, the Board awards the following increases to hourly rates:

Effective January 1, 1989:	$0.42
Effective April 1, 1989:	$0.42
Effective July 1, 1989:	$0.43
Effective October 1, 1989:	$0.43

Thus, by October, 1989, the full increase of $1.70 on the hourly rates for this category would be achieved. These increases should result in an hourly end rate for a CO2 of $18.45. The Board will remain seized if the parties are unable to work out a satisfactory computation of all the other

rates in the category and to deal with any other problems of implementation which the parties are unable to resolve.

Finally, the Board is persuaded by the Employer's submissions and notes that the parties were agreed in the tentative settlement that a time period of three (3) full pay periods is necessary for implementation of the award and the Board so awards.

The term of the contract is for one year effective January 1, 1989.

The salary increases will be retroactive to and payable from the effective dates stipulated on a full or pro rata basis for all paid hours including overtime.

The Board remains seized to deal with any problems arising from this award which the parties themselves are unable to resolve.

Dated at Kingston this 24th of January, 1990.

Jane E. Emrich Chair

Dissent attached
J.R. Scott Employer Nominee

"B. Switzman" - Addendum attached
B. Switzman Union Nominee

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

R.S.O.1980, c.108, s.10

Between

THE CROWN IN RIGHT OF ONTARIO AS
REPRESENTED BY THE MANAGEMENT BOARD OF CABINET

the Employer

And

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

the Union

DISSENT OF J.R.SCOTT

I have great difficulty in finding any correlation between the data accepted, and the principles espoused by my colleagues in the body of this award, and the amount of the final award on wages. I refer, in particular, to the following comments in the majority award:

> (at page 2)...Where the parties have been represented in negotiations by astute and seasoned personnel, as these parties were, the terms of the tentative settlement should "in the absence of useful eveidence to the contrary, be treated as very persuasive evidence of what constitutes a fair and reaonable settlement of the matters in dispute."
>
> (the cite in this paragraph is attributed to T/1/6 Crown

in Right of Ontario (Management Board of Cabinet) and OPSEU, Maintenance Services Category, 1980, G.J.Brandt at page 10)

(at page 3)...It is now trite to say that the task of interest arbitration is to replicate the results of voluntary collective bargaining.

(at page 5)...Since the bargaining context for these parties is Ontario, the Board finds the Ontario data is most relevant.

The majority award lists Ministry of Labour wage settlements for the first, second and third quarters of 1989 as 5,6%, 5.5% and 6.6% respectively, for all agreements without COLA. It then goes on to say:

(at page 6)...From these data and the submissions of the parties, the Board finds that on the information available to the parties at the time they were bargaining an increase of 6.5% on the average rate for the category, this seemed <u>comparable</u> or <u>favourable</u> to settlements obtained on base rates for the public sector in Ontario during the early part of 1989.
(emphasis added)

(at page 11)...Furthermore, it is apparent from this table that the rates of Ontario correctional officers exceed rates paid for working level correctional officers in other provinces by a substantial margin. However, the Board is prepared to give greatest weight to the wage history of these parties in Ontario, and the comparability to federal custodial officers established by the Teplitsky and Brunner awards, which was followed in voluntary settlement by the parties themselves in 1988.

And finally:

(at page 14)...Having regard to the increased rates of settlement in the Ontario public sector in the latter portion of 1989 and bearing in mind that such wage increases have outstripped increases in the C.P.I. in recognition of increased productivity of the economy, but especially because of the approximate parity accorded to salary rates for provincial and federal correctional officers which has been recognized by a line of arbitral authority and followed by the parties themselves in 1988, the Board concludes that an improvement upon the wage increase accorded by the tentative settlement is warranted.

With respect to the quotation immediately above, it has already been noted that the settlements in the Ontario public sector during the latter part of 1989 were virtually on line with the 6.5% increase in the negotiated settlement between the parties. Furthermore, 6.5% also outstrips the CPI increase of 5.8% for Ontario in 1989.

It should also be noted that, in his 1985 award for this category, Mr. Teplitsky established as a reasonable comparison to wages for federal correctional officers a wage of $14.70 per hour. This was exactly the average of the maxima of the federal COF1 and COF2 rates at that time.

In his 1986 award, Mr. Brunner "accepted" Mr. Teplitsky's comparison to the federal rates but, for some unknown reason, went beyond the Teplitsky formula in his wage award.

In 1988, in a successful effort to settle in direct negotiations and avoid the arbitration process, the parties agreed to the going settlement rate for that year. I suggest that the parties' agreement had more to do with settlement trends than with acceptance of Mr. Brunner's award. The employer should not now pay an additional price for having reached a negotiated settlement in the last round of bargaining.

The Board having accepted the principle that a tentative settlement

by astute and seasoned personnel on both side should "in the absence of useful evidence to the contrary, be treated as very persuasive evidence of what constitutes a fair and reasonable settlement...", having noted that settlements in the Ontario public sector were well below 6.5% in the first half of 1989 and only minimally above 6.5% in the third quarter of the year, and having accepted the comparison to federal rates established by arbitral authority, one might have expected the Board to uphold the tentative settlement or, at most, award a minimal increase. However, I do not see the rationale for, nor can I agree with an increase to the end rates of almost 4% beyond the very reasonable increase of 6.5% negotiated by the parties. I am particulary concerned with an increase of this magnitude in a one-year deal.

In order to support an increase of this magnitude, the majority uses a formula for comparison to federal correctional officers which includes the federal COF3. This goes well beyond the formula established by M. Teplitsky in 1985. The Union presented a very slim case for inclusion of the senior levels of the federal COF classes. They didn't call witnesses from the federal system as has been done in the past when comparability was being established. They did present documents which we were told were new benchmark job descriptions which would apply to "changes which are still in a process of review and as such are not officially finalized" (Union's brief, at page 69)

Furthermore, a reading of the job descriptions which were submitted to this Board clearly suggests that the federal COF3 is a considerably stronger job than the provincial CO2, the benchmark class in these negotiations.

As indicated earlier, my colleagues on the Board accept, as I do, that "the task of interest arbitration is to replicate the results of voluntary collective bargaining". To this I would add that interest arbitration should not, without very compelling reason, do anything which will make it more difficult for the parties to settle their differences in direct negotiations in the future.

I respectfully suggest that if ever there was a time for a board to replicate the results of voluntary collective bargaining, this was it. Unfortunately, the majority award virtually ignores the results of voluntary collective bargaining, and will do nothing to encourage this category, or other categories in the Ontario public service, to settle in direct negotiations in the future.

On ~~the~~ a positive note, I would also suggest that the award, being the third successive award which clearly establishes that the market comparison for Ontario correctional officers is with other correctional officers, should finally put to rest the Union's insistence on a comparison to police wages.

For the reasons cited above, I would have held that the 6.5%

increase negotiated by the parties was a fair and reasonable settlement which should not have been adjusted by the Board.

Dated at Toronto, this 12th day of February, 1990.

J.R.Scott

Employer Nominee

Addendum: Perhaps a small point, but I would like to comment on the assertion in the majority award, at page 2, that "[i]n fact the union membership rejected the settlement on the ratification vote by a large majority of eligible voters." (emphasis added)

The Union's brief, at page 9, says "The Union's bargaining team unanimously recommended this settlement for approval by the category's employees. However, it was rejected by 1,873 votes to 965. Seventy percent of those eligible to vote did so, and 66% of them voted to reject."

Clearly, only a minority of 'eligible voters' actually voted to reject the settlement. By my calculation based on the Union's numbers, only 46.2% of the 'eligible voters' cast votes against the negotiated deal.

IN THE MATTER OF AN ARBITRATION, PURSUANT TO THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT R.S.O. 1980, C108, S.10

B E T W E E N:

THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MANAGEMENT BOARD OF CABINET

- A N D -

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

RE: CORRECTIONAL SERVICES CATEGORY
1989 COLLECTIVE BARGAINING

A D D E N D U M

I have had an opportunity to review the award of the Chair and I join with her in the hourly wage rate increases contained therein.

The comparability to the Federal Correctional Service makes a good deal of sense. Ontario is the strongest economy in the country. Thus, these provincial employees, as a minimum, ought to receive no less than rates paid to Federal Correctional Officers.

In our award, we have placed these employees back into the position that they were in as a result of the Brunner Award. In turn, that award relied upon the Teplitsky Award. As I read the latter decision, that the Board did not make an extensive review of the Federal Service Classifications.

This Board has been told that in the Federal Service the progression for Maximum Security work is by way of the COF-2 level and then into COF-4. Federal Officers working in minimum or medium security institutions progress through COF-1 and then into COF-3. We were also told that most Ontario Correctional Officers work in maximum security settings.

Therefore, it would appear that in the next round of bargaining, the parties must look at more appropriate comparables. At first glance, it would seem that the Correctional Officer would be more directly comparable to an averaging of the COF-2 and COF-4 rates or, perhaps, the COF-4 rate itself. Hopefully, that detailed study will shortly be worked out by the parties.

I would make only one comment about the issue of O.P.P. comparability. This has been a long standing point of contention between the parties. Because the focus of this dispute has been the impact of changes in the Federal Correctional Officers' series, comments on O.P.P. rates are simply obiter. Yet, my reading of Mr. Teplitsky's Award indicates to me that a relationship to O.P.P. rates was a consideration in the final salary rate increases that he awarded.

Finally, I must congratulate the parties on their recent fruitful efforts on the issues of staffing and pension. I truly hope that this is a sign that an improved environment is being created in which productive results will flow from these co-operative undertakings.

DATED AT Toronto, Ontario, this 27th day of February, 1990.

Respectfully submitted,

Brian Switzman
Union Nominee

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T/0046/88

IN THE MATTER OF AN ARBITRATION

PURSUANT TO ARTICLE 5.8 OF A COLLECTIVE AGREEMENT

BETWEEN Ontario Public Service Employees Union

- and -

The Crown in Right of Ontario

And in the Matter of the Estabilshment of Salary Ranges for the New Class Series Workers' Compensation Advisers 1 and 2

BEFORE:	D. Fraser	Vice-Chairperson
	L. Robbins	Nominee
	J. Bevan	Nominee
FOR THE GRIEVOR:	J. Miko Job Evaluation Officer Ontario Public Service Employees Union	
FOR THE EMPLOYER:	E. Hipfner Staff Relations Officer Staff Relations Board Management Board of Cabinet	
HEARING:	October 17, 1989 November 13, 1989 and written submissions following.	

This matter involves the determination of wage rates for the Workers' Compensation Adviser class series, for employees in that series in the classes of Workers' Compensation Adviser 1 (referred to as WCA1), and Workers' Compensation Adviser 2 (referred to as WCA2). It was referred to this board of arbitration pursuant to Article 5.8 of the collective agreement between the parties, which reads as follows:

> "5.8 When a classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration."

Employees in this class series work in the Ministry of Labour in the Office of the Worker Adviser, and the Office of the Employer Adviser. As noted by the employer, the employees at each level are generally responsible for providing advice to claimants or employers on all matters relating to workers' compensation, and representing such persons at all levels of the Workers' Compensation Board and Workers' Compensation Appeals Tribunal. There are currently no employees at the WCA1 level, but such would be primarily responsible for case intake, the conduct of initial investigations, and the provision of summary

assistance to employers or claimants. Cases which involve complex medical and legal issues, on-site investigations, or representation of a client at a hearing, are not normally handled at the WCA1 level.

Employees at the WCA2 level are responsible for managing a case from the initial investigation through all phases of the appeal and case resolution process, including representation at the Workers' Compensation Appeals Tribunal if necessary. They also provide a broad range of advisory and consultative services to their clients, and would provide guidance and assistance to employees at the WCA1 level. There are currently 44 Worker Advisers, and 14 Employer Advisers at the WCA2 level. In the Annual Report of the Ministry, the duties of employees in the Office of the Worker Adviser are described as follows:

> "The Office of the Worker Adviser (OWA) assists injured workers in dealing with the workers' compensation process, with special reference given to the Client Services Division of the Workers' Compensation Board (WCB) and the Workers' Compensation Appeals Tribunal (WCAT), by:
>
> Advising injured workers of their rights under the Workers' Compensation Act so that they will be able to represent themselves at the operating levels of the WCB.
>
> Representing injured workers at all levels of the WCB, at the WCAT and beyond.
>
> Working with labour and injured worker groups, MPPs and other organizations representing injured workers, and supporting them in their representation work.

> Identifying operational problems in workers' compensation that may require changes in practices or policies."

That Annual Report describes the duties of employees in the Office of the Employer Adviser in the following way:

> "The Office of the Employer Adviser (OEA) provides Ontario Employers with advice on matters relating to workers' compensation through practical assistance on problems and questions related to the Workers' Compensation Board (WCB) and the Workers' Compensation Appeals Tribunal (WCAT). As well, it advocates policy on behalf of Employers by communicating their concerns to the proper administrative authorities.
>
> The OEA helps to provide a independent appeals and claims review system in Ontario and assists Employers in understanding WCB procedures, policies and statutory operating requirements."

This class series originated from the following circumstances. Prior to October, 1985, there were three employees, classified as "Worker Advisers", who worked with the Workers' Compensation Board giving advice to both employers and injured workers. Those three employees were not independent of the WCB.

In October, 1985, the Workers' Compensation Act was changed to make the system more responsive to the public. As part of that change, Worker Advisers were made independent of the WCB, and their function was split into the Office of the Worker Adviser and Office of the Employer Adviser, which offices were

relocated under the aegis of the Ministry of Labour. Those new offices were originally staffed by employees on unclassified contracts, but by 1986, the jobs became full-time civil service positions.

In February, 1986, as the old WCB Worker Adviser Office was being wound down, the employer started to update the position specification so that it would be appropriate for employees in the two new offices, and in April, 1986, employees hired to the new offices at the WCA2 level were classified as Community Development Officer 3 (Atypical), which we shall refer to as CDO3.

By the fall of 1986, fourteen of the Worker Advisers grieved the CDO3 classification, claiming that the positions ought to be reclassified as Investigators 2, Ontario Securities Commission. Those grievances are presently being held in abeyance.

At approximately the same time, the employer engaged upon job classification audits of the positions, which culminated in the approval of new class standards, effective April 20th, 1988. Those standards produced two levels of positions. The first is the Workers' Compensation Adviser 1, for which the employer has proposed the salary rate for Rehabilitation Officer 2 (Correctional Services); and the second is the Workers'

Compensation Adviser 2, for which the employer has proposed the salary rate for Community Development Officer 3 (Atypical).

The union disagrees significantly with this proposal, focusing primarily on the alleged unsuitability of the comparison of the WCA2 position to the CDO3 position for the purpose of setting rates. Although the union has made a number of other comparisons, it submits that the comparison between the WCA2 position and the CDO3 position fails to take into account the depth, variety, and demands of the advocacy, consultative, and policy roles of the WCA2 position, which it alleges were either different or more complex than is found in the requirements of the CDO3 position. The union seeks to compare the WCA2 position with that of Investigator 2, Ontario Securities Commission and that of public service Legal Counsel, both of which it alleges, more closely resemble the job function of the WCA2, than Community Development Officer 3 does.

In comparison to the substantial submissions respecting the WCA2 position, little was said about comparisons for the WCA1 position, presumably because there are no employees presently at that level. A numerical comparison was made between the WCA1 position and the position of Investigator 1, Ontario Securities Commission, which showed a substantial percentage difference in rates between the two, with the WCA1 position lower. However, of more significance may be the fact that the parties did not

dispute the suitability of relative salary rates, or differential, between the WCA2 and WCA1 levels. We shall refer to that matter further, below.

This historical summary is necessary as the board herein is required to set new rates for a new class series, and the genesis of that series is accordingly more relevant that when a board is dealing with a revised series, for which the early history may be less material. Furthermore, the history has given rise to conflicting positions of the parties respecting the retroactivity of any rate set, which we will determine later. Finally, we would note that the parties raised some concerns respecting the scope of our jurisdiction, which we shall consider next.

Jurisdiction

An examination of Article 5.8 shows that an arbitration under that article arises originally from one of two specific circumstances: (a) the creation of a new classification; or (b) the revision of an existing classification. If negotiation fails to produce agreed salary ranges, then the employer sets the range, "subject to the right of the parties to have the rate determined by arbitration."

In contrast, Sections 7, 8 and 10 of the Crown Employees Collective Bargaining Act provides as follows:

7. Upon being granted representation rights, the employee organization is authorized to bargain with the employer on terms and conditions of employment, except as to matters that are exclusively the function of the employer under subsection 18(1), and, without limiting the generality of the foregoing, including rates of remuneration, hours of work, overtime and other premium allowance for work performed, the mileage rate payable to an employee for miles travelled when he is required to use his own automobile on the employer's business, benefits pertaining to time not worked by employees including paid holidays, paid vacations, group life insurance, health insurance and long-term income protection insurance, promotions, demotions, transfers, lay-offs or re-appointments of employees, the procedures applicable to the processing of grievances, the classification and job evaluation system, and the conditions applicable to leaves of absence for other than any elective public office or political activities of training and development. R.S.O. 1980, c.108, s.7.

8. (1) Upon being granted representation rights under section 4, the employee organization may give the employer written notice of its desire to bargain with the view to making a collective agreement.

(2) The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement. R.S.O. 1980, c.108, s.8.

10. If a collective agreement is not realized in accordance with the procedure prescribed by the Tribunal within thirty days after the appointment of the person or persons under subsection 9 (2), or such longer period as the Tribunal may direct or the parties may agree upon, or if the Tribunal decides that the establishment of such procedure will not be effective, all matters in dispute coming within the scope of collective bargaining under this Act shall be decided by a board of arbitration in accordance with this Act. R.S.O. 1980, c.108, s.10.

Those three sections (among others), provide a scheme for the determination by the Ontario Public Service Labour Relations Tribunal of collective bargaining disputes "if a collective agreement is not realized in accordance with the procedure prescribed by the Tribunal ..." (s.10). That determination follows on the part entitled "Negotiation of Agreements", containing Sections 7 and 8. The s.10 arbitration is patently provided to resolve disputes arising out of the negotiations provided for in Sections 7 and 8. Furthermore, there is no reference in those sections to any Article 5.8 agreed to between the parties, and providing "arbitration" to set salary ranges where such are in dispute pursuant to a new or revised classification.

We conclude from the above that the arbitration in Article 5.8 is consensual to the extent it arises from the agreement of parties, and not from the provisions noted in the Crown Employees Collective Bargaining Act. Each process is designed for a distinctly separate purpose.

A Tribunal under the Act, or a board established thereunder, is required during deliberation to consider various factors as set out in s. 12(2) of the Act, which reads as follows:

> 12(2) In the conduct of proceedings before it and in rendering a decision in respect of a matter of dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,

(a) the needs of the Crown and its agencies for qualified employees;

(b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;

(c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

A board of arbitration under Article 5.8 of the collective agreement is not required by the Act to consider any factors. It may accordingly adopt any standards of review it considers relevant. Such a board of arbitration may therefore take the factors found in s.12(2) of the Crown Employees Collective Bargaining Act directly into account to the extent it views them as relevant; or it may import those standards or some of them into its decision by implication, in dealing with the varied submissions of the parties; or, in appropriate circumstances, it may not rely on those standards at all, but on other standards. Its jurisdiction in this respect is determined by the fact that it was created by the parties in their collective agreement, for a specific purpose, and it is only an incidental and voluntary offspring of the collective bargaining scheme provided for in the

legislation. The board accordingly has a broad jurisdiction to consider factors, limited only by relevance, and it exercises that jurisdiction for the very specific and limited purpose of determining a rate. We will now turn to a consideration of the appropriate rate.

Salary Rates

The Workers' Compensation Adviser 2 position will be considered first. That position encompasses both Worker Advisers and Employer Advisers, each group separate and performing its functions out of a separate office to the other. The board has been provided with position specifications for both Worker Advisers and Employer Advisers, each with the class allocation of Community Development Officer 3 (Atypical). A comparison of those two position specifications with each other, and with the class standard for "Workers' Compensation Adviser", which embraces each position, indicates that the role of the Worker Adviser is essentially similar to that of the Employer Adviser in respect to purpose of position, duties and related tasks, and other matters. The roles of the two Advisers are only different in their basic elements to the extent that one group advises claimants, and the other, employers. We accordingly view evidence and submissions concerning the Worker Adviser as appropriately also covering the Employer Adviser for the purposes of this rate-setting exercise, and would note that the parties did not suggest otherwise at the hearing.

The setting of an appropriate rate for the WCA2 position does not involve a direct comparison between that position and other closely-fitting positions in the Ontario Public Service. Both parties agree that the Advisers occupy a unique class, with no other class within the OPSEU bargaining unit which provides direct and easily-related points of comparison. For that reason, the factor found in Section 12(1)(c) of the Crown Employees Collective Bargaining Act, involving the desirability to maintain appropriate relationships in conditions of employment between classifications of employees, can only be loosely applied in terms of setting a rate. However, that factor was relied upon by both parties in their submissions, and we view it as reasonable and appropriate to adopt it as a relevant factor in our determinations.

The employer also reviewed the question of attraction and retention of qualified employees, in the context of Section 12(1)(a) of the Act, which concerns the need of the Crown and its agencies for qualified employees. We shall consider those submissions in the light of that factor, and will comment on its relevance later. Finally, we find the factor found in Section 12(1)(d), respecting the need to establish fair and reasonable terms and conditions of employment in respect to various matters such as qualifications, work performed, and so on, as broadly appropriate insofar as the rate of pay is a term of employment, and that factor will generally permeate our review. We therefore

will either adopt or make reference to a number of factors in the Crown Employees Collective Bargaining Act, but we would emphasize that that is a voluntary selection by this board, in view of the submissions of parties and the general nature of the case.

The employer has set the rate of the WCA2 position at the level of CDO3 (Atypical), as has been noted earlier. In so doing, the employer concedes that the relevant class standard for CDO3 does not describe the Adviser job, but submits that the salary level is appropriate. The employer has also made a series of submissions respecting recruitment and retention, which include evidence (which we accept), that there is no difficulty in recruiting and retaining qualified employees for the Adviser position.

The union has submitted in essence that the Adviser position bears no relationship to the Community Development Officer position, and there are accordingly no grounds for accepting that latter series for the purpose of rate setting. The union notes that the preamble to the class series for CDO describes "programmes which foster and encourage citizen interest and participation in community activities for social development, cultural enrichment, recreational enjoyment and physical fitness". In comparison, the class series for the Adviser includes case management, a difficult and complex advocacy function, advisory and consultative services, and involvement in

the foundation of policy. At the hearing, the union undertook, and the employer responded to, an exhaustive examination of these functions, both as found in the class standard and position specification, and the duties performed. The union proposed that more apt and relevant comparisons might be found in the positions of Investigator 2, Ontario Securities Commission, and in Legal Counsel who work in the Ministry of the Attorney General. In addition, the union submitted that since the initial transfer of positions from the Workers' Compensation Board, the Adviser positions have been under-compensated in relation to the former Worker Advisers. These comparisons show that the wage differential by which the Adviser position is below that of Investigator 2 OSC, Legal Counsel, and former Worker Advisers, is appropriately 12.6%, 21% and 42.6%, respectively.

Both parties reviewed these comparisons in extensive detail in their submissions. Without replicating all those submissions, we would note that the following issues arose, and have been considered by us, among many others. The union submitted that the Investigator 2, OSC, position was similar to that of Adviser for a number of reasons, including the fact that both prepare cases for adjudication. Nonetheless, the union proposed that the Investigator 2, OSC, wage level was insufficient, as persons in those positions do not have an advocacy role. The employer submitted that the Investigator 2, OSC, position was more complex than that of Adviser, in that the Investigator was involved in

highly technical and difficult criminal and quasi-criminal investigations. The union examined the function of Legal Counsel, and noted that it contained a substantial advocacy role, similar in many respects to that of Adviser. The employer responded with a series of submissions indicating that the overall functions and responsibilities of Legal Counsel were at a broader and significantly higher level than that of Adviser. The union proposed that the former Worker Adviser was a particularly apt comparison, as duties were closer to the current Adviser position than is found in other comparables. The employer responded that the jobs were significantly dissimilar. The employer noted further that the old Adviser position is independent of the Ontario Public Service, and bargains through a different agent. In addition, the former Advisers advised both parties, and operated throughout the Province, which is not true of the new positions.

Many of these submissions involved detailed examination of class series or position specification, or other material, which we have reviewed but will not include here. In resolving this matter, the board essentially did two things.

We reviewed all the job comparisons in the light of the factors noted earlier, and in the light of other submissions of the parties, and we were able to place the WCA2 position at a general level in respect to the comparative positions. Then we

tabulated various salary ranges, primarily according to minima and maxima, and then on a further review of the job comparisons, we placed the WCA2 position at a rate that appeared to be fair and equitable. The principal conclusions we arrived at (among many others) are as follows.

First, in respect of recruitment and retention, we adopt the general approach found in an interest award for the General Operational Services Category (T/0039/88), dated January 12th, 1990. The board in that matter (chaired by the chair of this board), reviewed that factor at pp 9-12, and concluded at p. 11-12 as follows:

> We think that in view of the size and diversity of the occupations in the Ontario Public Service, that a factor of recruitment and retention would be most significant when it also enters the web through the "comparable" route. In other words, if there is a downturn in the economy reflected, for example, in conditions of employment outside the public service, or in other classifications, it may be that ease of recruitment and retention changes the comparable conditions of employment to the extent that those changes in turn are seen as affecting conditions of employment in the category in question. We would conclude for these reasons that ease of recruitment and retention is certainly a factor to consider as we have here, but its weight depends in large part whether it has affected the large list of other comparable factors in the legislation. Evidence of that will be found directly in such things as comparable wage and settlement data. Thus, in conclusion, <u>difficulties</u> in recruitment and retention may produce a direct increase in benefits and working conditions. In a process of wage determination weighed heavily to comparables,

> ease of recruitment and retention must be viewed in light of the comparables, and it will have most effect when it is reflected by them.

We adopt that conclusion in respect of the comparable positions in this case, and in respect of the comparable wage data we have reviewed.

We then concluded that overall, the WCA2 position could not reasonably be compared with the CDO3 position in the light of substantial differences between those job functions; and in the light of more relevant similarities between the WCA2 position and other comparables before us, involving such matters as investigative and advocacy functions. The Investigator 2, O.S.C. position was difficult to compare. It had some complex investigative functions, and others, but on the whole the advocacy function and others found in the WCA2 position brought that position in at a level above Investigator 2. The Legal Counsel position bore similarities in respect of the advocacy role, but on the whole it involved a far more complex function. It was a weak factor, but it did exert a slight pull which corroborated the view that the WCA2 position should be above the Investigator 2 position. The old Adviser bore some notable similarities, but had enough differences that it, (as the Legal Counsel position), was more of a corroborative factor than a significant factor. As is apparent from the above, substantial weight was placed on the advocacy function found in the WCA2

position, among other factors, as that function is of a different order of complexity when compared, for example, to an investigative function.

These results in light of the figures found in the wage rate tabulation, lead to a further conclusion that a wage rate increase of 14% is appropriate for the WCA2 position. In view of the limited evidence relating to the WCA1 position, we conclude that the differential percentage between that and the WCA2 position should generally be maintained, and we conclude that a similar 14% increase is appropriate for the WCA1 position. That leaves the issues of retroactivity and interest to be determined, but before doing so, we would note briefly that as part of our deliberations we have reviewed a report dated September, 1989, entitled "An Evaluation of Certain Aspects of the Office of the Worker Adviser". That report has given us a helpful history of the development of the class series in issue before us, but the host of other submissions and matters in evidence before us were the principal determinants in reaching our conclusions.

Retroactivity and Interest

The employer has submitted that any new wage rate for the class series should be effective starting April 20th, 1988. That is the date that the Civil Service Commission approved the new standards, and as those standards did not exist prior to that date, the employer submits that our limited jurisdiction to set a

rate for the new series, cannot go behind the time that that series existed.

The union has noted that in the fall of 1986, fourteen of the Worker Advisers grieved the CDO3 (Atypical) classification, claiming that the positions ought to be reclassified as Investigator 2, Ontario Securities Commission. Those grievances are presently in abeyance, pending the outcome of this award. One of those grievances is in evidence before this board, dated August 25th, 1986. The union has submitted that retroactivity be awarded according to the well-known "20 day" rule (20 working days prior to the grievance being launched), as applied by the Ontario Public Service Grievance Settlement Board in classification grievances, and also applied at least once in an Article 5.8 arbitration similar in some respects to this one.

On this matter, the union has made a number of submissions. They include the need to make employees in the new class series "whole", in respect of any increase, which, it is submitted, should embrace the period commencing at the first challenge by grievance arbitration of the propriety of the wage level; and the need for expedience and efficiency which would be met by a retroactive date encompassing the time period of the grievances held in abeyance. Such an award of retroactivity would presumably dispose of all those outstanding grievances by one action.

In this respect, the parties have variously referred to an interest award under Article 5.8 which established salary ranges for the Environment Officer Class Series (chaired by Judge John D. Ord, and dated October 11th, 1989); and an interest award under the same article which established salary ranges for the Fire Services Adviser Series (chaired by Arbitrator John T. Clement, Q.C., and dated January 3rd, 1990).

The Ord award (as we shall refer to it), took what is the employer position herein, and awarded retroactivity to the date of approval of the revised standards of the series in question, by the Civil Service Commission. In contrast, the Clements award back-dated retroactivity to the date of a relevant classification grievance, which is of course the position advanced by the union.

The board heard argument on this issue both at the hearing, and by way of letters from both parties received by arrangement after the hearing, and we would respond as follows. First, there is no doubt that the interests of expediency, efficiency, and contained within that, a reasonable resolution of the outstanding grievances before the Grievance Settlement Board, would all be met by a retroactive date encompassing the start of those grievances. Furthermore, such a date would presumably make the involved grievors whole in most, if not all, respects of their grievance.

There is also no doubt that such would be a desirable result in terms of the overall industrial relations between the parties.

However, we do not have the jurisdiction to achieve that result. Our jurisdiction has been specifically limited by agreement of the parties as found in Article 5.8 of the collective agreement, and it is up to the parties to confer a broader jurisdiction to effect such a result in the future, by making appropriate amendments to that Article.

Article 5.8 provides a right to "have the rate determined by arbitration". As noted at the outset of this award, our jurisdiction as an essentially consensual board comes from that Article, and not in respect of that function, from any other legislation which might embrace broader principles of adjudication. We can therefore set the rate, and do anything directly incidental to that function, but nothing more. We do not find that retroactivity for the purpose of embracing and resolving classification grievances, is directly incidental, for the following reasons.

The concept of making a grievor, or a number of grievors "whole", is an admirable, necessary, and widely accepted incident of grievance arbitration. But our jurisdiction is clear and limited. It is to set a rate on application of the union and employer. We are not seized with any individual or group

grievances respecting improper classification, and we have no individual grievors to make whole. They are all before another board, with a different (and broader) jurisdiction, and Article 5.8 contains no mandate to either incorporate their grievances, or involve ourselves in that other jurisdiction. The broad remedial power found in the well-known case of Re Polymer Corp. Ltd. (1959), 10 L.A.C. 51 (Laskin), allows an assessment of damages as a remedy for a collective agreement violation which has resulted in a loss to an innocent party, and that broad power must be considered in view of the claim for retroactivity herein. The answer, again, is that such a remedy is presently being sought, and may be obtained in the right circumstances, in a different forum with a different jurisdiction from ours. The Grievance Settlement Board has a specific and detailed jurisdiction with respect to "an employee" who claims that she is "improperly classified" (s.18(2) of the Crown Employees Collective Bargaining Act). The GSB has full jurisdiction to consider all the elements of making an employee whole if such a grievance succeeds, and the retroactive date of an award by that board may or may not extend to the date of the grievance or 20 days prior, depending on the individual circumstances (see, for example, Holley, (1162/88), where retroactivity reached back to the point in time where a grievor was actually performing a function in a higher classification). Our jurisdiction is limited to setting a rate, and we furthermore have no general knowledge of the facts of any grievance before the GSB. To

attempt to settle such grievances for recognizable principles of expediency, efficiency and justice, would accordingly not only involve going beyond our jurisdiction, but it may also involve an improper result in terms of an individual grievor.

For these reasons, we declare that the retroactivity date for the awards of increases for both Workers Compensation Adviser 1 and 2, is April 20th, 1988, the date of approval of the new standards by the Civil Service Commission. Under all the circumstances, we do not view an award of interest as appropriate.

In summary, the rate for the new class series Workers' Compensation Adviser 1 and 2 is increased 14%, effective April 20th, 1988. As requested by the parties, we remain seized to deal with any aspect of implementation, should a problem arise. We have attached the new class series, a position specification for a Worker Adviser, and a position specification for an Employer Adviser as Appendices A, B and C respectively, to this award.

Dated at Ottawa
this 15th day of June , AD 1990

D. Fraser, Chair

- See partial dissent

Jane Bevan, Employer Nominee

(See Addendum)

Larry Robbins, Union Nominee

IN THE MATTER OF AN ARBITRATION

B E T W E E N: CROWN IN RIGHT OF ONTARIO
Employer

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
Union

AND IN THE MATTER OF THE ESTABLISHMENT OF SALARY RANGES FOR THE NEW CLASS SERIES WORKERS' COMPENSATION ADVISERS 1 AND 2

A D D E N D U M

I have reviewed the Award of the Chairman in this matter and have joined with him. In my view, there was, however, much in the evidence that would have justified an even greater increase. The severe drop in rates of pay, which occurred when the position was transferred from the Workers' Compensation Board to the Ministry of Labour, is a dramatic indication of how under-valued this position has been.

Nevertheless, I do believe that the result in this case does provide a significant monetary boost to this group of employees, although further additional adjustments may in fact be required in the future.

I wish to comment on two other aspects of this Award. On the issue of retroactivity, I would have made the increases effective back to the fall of 1986, when the grievances were first raised.

The date of April 20, 1988, is the date on which the Employer submitted the class series to the Civil Service Commission for approval, which approval was given on the same date. In my view, although a number of Section 5.8 Awards have used this event as the effective date, there is nothing in Article 5.8 of the Collective Agreement which prevents us from making the revised salaries effective from an earlier date.

Note that we are dealing with a newly created position. The position of Workers' Compensation Advisor existed before April 20, 1988. In fact, the jobs have existed as full time civil service positions since early in 1986. In the fall of 1986, the employees in this position began showing their discontent with their classification by filing grievances.

The Employer then conducted job audits, prepared new class standards, and formally set the salary range, and applied to the Civil Service Commission for approval on April 20, 1988. The salary range that was approved was, in fact, identical to the range that the Government had been using for the previous two years. That is, the rates for Workers' Compensation Advisor 2 continued to be set in line with the C.D.O. 3. classification. In that sense, April 20, 1988, is really an artificial date. The delay in writing the new class standards was not caused by either the employees or the Union, and it is simply unreasonable that the employees should be adversely affected by this delay.

Simply put, this Board has the task of setting appropriate rates of pay for the Workers Compensation Adviser position. The employees have been working for the Employer for some four years at an under-valued rate. The collective agreement is silent on when the new rate which this Board sets may take effect. I therefore do not agree that by some jurisdictional limitation we are limited to going back only to April 20, 1988.

Of course, this is not the end of the matter. The Union must now return to the Grievance Settlement Board to achieve the appropriate increase for these employees for the period from 1986 to April/88. In my view, this is a convoluted process, which must be extremely frustrating for the employees involved.

I would only hope that the additional retroactivity owed for that earlier period can be resolved by the Parties so that the continuing litigation which has occurred over this issue can finally be brought to a conclusion.

Finally on the question of the source of the Board's jurisdiction, this matter has been argued before a number of Section 5.8 Boards, and it may be a somewhat academic exercise. It is clear that the Board has broad jurisdiction to consider the factors found in Section 12 of C.E.C.B.A., as well as any other factors it deems to be relevant.

Nevertheless, I still prefer the Union's position that we are a Board acting in accordance with the provisions of the Act. That is not to say that we are not also governed by Article 5.8 of the Collective Agreement. But, the Parties have clearly used the provisions of C.E.C.B.A. to establish an ad hoc Board of Arbitration. We are not a panel of the Grievance Settlement Board set up in accordance with Article 27. Therefore, when Article 5.8 refers to "Arbitration", in my view, the provisions governing such an arbitration are those of C.E.C.B.A.

In addition, the exercise we as a 5.8 Board are mandated to carry out is much more in the nature of an Interest arbitration than a Rights arbitration. The exercise involves amending the rates of pay in the Collective Agreement, albeit for a given classification.

Both Parties have recognized that if negotiations to set those rates of pay are not successful, then an ad hoc Board of Arbitration is established. Certainly, in practice this has been done in accordance with the provisions of the Act.

DATED AT TORONTO this 14th day of May, 1990.

Larry Robbins
Union Nominee

WORKERS' COMPENSATION ADVISORS 1 AND 2

PARTIAL DISSENT

I dissent with respect to the 14% increase awarded to the classes of Workers' Compensation Advisors 1 and 2.

As noted on page 12 of the award, it was acknowledged by both parties that there were no comparable classes within the OPS bargaining unit against which the new classes could be directly compared. The award, then, on page 17, concludes that the WCA 2 class is at a level above the Investigator 2, OSC and below that of Legal Counsel. This conclusion is based on an analysis of some job functions which are present in all three classes. In my opinion, the similarity of some job duties should not have been so persuasive in determining this award since jobs are classified on the basis of an analysis of compensable factors and not on a comparison of selected duties.

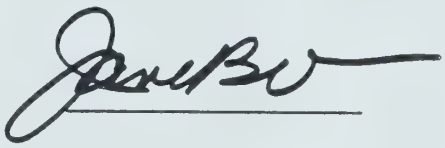
It was argued by the employer that the salary for the WCA2 is currently in the top 20% of its category. The category itself, is the second most highly paid in the bargaining unit. Further, it was demonstrated that the employer had been successful in attracting and retaining highly qualified employees at that salary level.

These factors suggest to me that the current salary levels are not significantly out of line for these classes.

I would have awarded an increase of 6%.

In all other respects, I concur with the Chairman's award.

Respectfully submitted,



Jane Bevan

T/0048/88

IN THE MATTER OF AN INTEREST ARBITRATION

UNDER

THE CROWN EMPLOYEES COLLECTIVE BARGAINING UNIT

INVOLVING

THE INSTITUTIONAL CARE CATEGORY

Between: Ontario Public Service Employees Union

- and -

The Crown in Right of Ontario

Before: D. Fraser, Chair
George J. Milley, Employer Nominee
Brian Switzman, Union Nominee

Appearing for the Employer: Michael Milich, Staff Relations Officer
Human Resources Secretariat

Appearing for the Union: Andre Bekerman, Senior Negotiator, OPSEU

Hearing: August 15th, 1989, Toronto

This matter involves the determination of wage rates and other matters for approximately 5,300 employees in the Institutional Care Category of the Government of Ontario. The Institutional Care Category is one of eight occupational categories which bargain separately for wages. The Category consists mainly of employees involved in the care and custody of adult and juvenile wards of Ontario Psychiatric Hospitals, students of Schools for the Blind and Deaf, and residents of Mental Retardation Centres. The two most numerous classifications in the Category are Counsellors, Residential Life, and Psychiatric Nursing Assistants, who together account for approximately 76% of the Category. The Category also includes a number of other groups of employees, including Ambulance Officers. That group has approximately 331 employees, of whom some 45 to 50 have duties in the Air Ambulance Service, requiring flying in aircraft including helicopters. Members of that latter group are described as Air Ambulance Officers.

The parties agree that the collective agreement containing the increases to be awarded herein shall be effective from January 1st, 1989, to December 31st, 1989. They have further agreed that increases shall be retroactive to January 1st, 1989, shall be payable on a full or pro-rata basis to all employees who are or were in the Category, and shall apply to all paid hours including overtime worked.

The matters in dispute involve salaries, special cases, pension rate increase protection, implementation, and interest on retroactive payments. We will consider these matters in turn.

Salaries

The Union has proposed an increase of 9.8% in wages throughout the Category. In support of that proposal, it relies on a number of factors including the growth in the Ontario economy, wage settlements in the public and private sectors in Ontario and elsewhere, growth in productivity, and difficulties in working conditions including stress and increasing workload.

The Employer has proposed that the wage increase be within the range of settlements in 1989 for four other wage categories in the Ontario Public Services. Adjusted for special cases, those increases average out to 5.89% for Administrative Services, 6.326% for Scientific and Professional Services, 5.94% for Technical Services, and 6.077% for Office Administration. In support, the employer relies on a number of factors, including the economic climate as reflected by settlements in the private sector, internal relationships, recruitment and retention, and comparability of rates of pay for similar work in the private sector.

We have reviewed all of these factors in detail. Submissions in respect of many of them have been analysed in depth in previous interest awards. We do not propose to repeat or add to those lengthy considerations in detail, but will indicate some major elements that led to our result.

We have given substantial weight to settlements in the four other wage categories in the Ontario Public Sector, as they have been freely negotiated, as they represent a collective bargaining response to many factors which are also before us, and as they are close to home.

We have given some weight to the deterioration of the ratio in salaries between Psychiatric Nursing Assistants (PNA's) and Counsellors (Resident Life), on the one hand, and Registered Nurses in the Ontario public service. There is also some similarity in the maintenance of that ratio (historically around 75% at the maximum rate), to the maintenance of the ratio between Registered Nursing Assistants (RNA's) and Registered Nurses in general hospitals. Sections 12(2)(b) and 12(2)(c) of the Crown Employees Collective Bargaining Act mandate us to consider such factors, with the latter sub-section providing authority to consider such relationships "between classifications of employees". This consideration, however, must be approached with caution, as the evidence suggests that the ratio may be in large part more of a statistical relationship than a historically-bargained one. Furthermore, the evidence also indicates that there are approximately two Counsellors for every PNA, which has the effect of limiting the statistical reach of such a ratio. Nonetheless, a working relationship exists, and weight must be given to maintaining the "appropriate relationships" as provided by CECBA.

Settlements in other sectors have been reviewed and provide general guidelines for us, but they are not as determinative as the more specific factors we have considered. Growth in productivity is also a factor, but it is subsumed to some degree in the settlements we have reviewed.

We have given some weight to working conditions, and have reviewed evidence indicating a comparatively high stress level in the Category, caused by the unique demands of institutional care work combined with an increasing workload. We would note, however, that the Institutional Care Category is not alone in this respect, as the evidence also shows unusually high stress levels

for correctional workers, and others who are involved with institutionalised patients and inmates.

Recruitment and retention are not simple factors to deal with. There is some evidence from the employer that there is no particular difficulty in recruiting and retaining employees in the Category, but the submissions on this are a relatively new matter, and the data must be regarded with care. In particular, we would note that there are problems with retention data. For example, exit surveys (to find reasons for leaving) are an important element of any submission on the validity of retention data, but, as the union has pointed out, reasons given for leaving will very often be masked for unspoken reasons, such as a desire not to "burn one's bridges". We can, however, conclude that recruitment and retention is not a significant problem in the Category, as it has, perhaps, been in other categories.

The effect of such a conclusion is limited. Where recruitment or retention is a problem, the response is reasonably straight-forward. Benefits are increased until a satisfactory recruitment or retention percentage is achieved, or other changes are made involving such things as better job advertising, recruitment bonuses, or enhanced working conditions.

But where recruitment or retention is not a problem, the opposite response, in some form or other, may not be appropriate for a category in the Ontario Public Service. The factors provided in CECBA, section 12(2), illustrate why. Section 12(2)(a) refers to the need for qualified employees. However, the following subsections refer to such matters as conditions of employment in similar occupations, maintaining appropriate relationships between classifications, and fair and reasonable terms and conditions relative

to such things as qualifications, work performed, responsibility assumed, and so on. Those latter factors are almost all comparative factors, in one sense or another, making comparisons with other occupations or classifications, or comparing terms and conditions with such things as work performed or responsibility assumed. So there is a large, inter-related web of factors used to suggest an appropriate wage level which have little or nothing to do with recruitment or retention on their face. It would be an unusual and unbalanced result, if the results of all such mandated comparisons were then down-graded, or reduced in effect, because, as found in section 12(2)(a), "the needs of the Crown and its agencies for qualified employees" was being easily met. Such certainly could be done, but the circumstances would have to be quite unusual for the other "comparable" factors, in effect to be given less weight.

We think that in view of the size and diversity of the occupations in the Ontario Public Service, that a factor of recruitment and retention would be most significant when it also enters the web through the "comparables" route. In other words, if there is a downturn in the economy reflected, for example, in conditions of employment outside the public service, or in other classifications, it may be that ease of recruitment and retention changes the comparable conditions of employment to the extent that those changes in turn are seen as affecting conditions of employment in the category in question. We would conclude for these reasons that ease of recruitment and retention is certainly a factor to consider as we have here, but its weight depends in large part whether it has affected the large list of other comparable factors in the legislation. Evidence of that will be found directly in such things as comparable wage and settlement data. Thus, in conclusion, <u>difficulties</u> in recruitment and retention may produce a direct increase in benefits and working conditions. In a process of wage determination weighed heavily to comparables,

ease of recruitment and retention must be viewed in light of the comparables, and it will have most effect when it is reflected by them.

Of all these matters, then, settlements in the four other wage categories have been given substantial weight. Conditions of employment in similar occupations have been reviewed, and in particular the PNA/RN ration has been considered in light of an outside comparison. Difficulties in working conditions have been a factor, and a number of other factors have been reviewed, including recruitment and retention. We conclude that the resulting increase should be above the average range of settlements in the Ontario Public Service, and award an increase of 6.5% for all classifications effective January 1st, 1989, for all paid hours including overtime worked for all employees in the Institutional Care Category in 1989.

Special Cases

The union has submitted that Ambulance Officers comprise a special case within the Category for which a 5% increase in wages above any general increase, is justified. The special case is based on the differential between wage rates for such Officers, and wage for rates for Ambulance Officers in the Metro Toronto Ambulance Service. The starting rate of that latter group is 8.8% higher than that in the Ontario public service. After two years, it is 5.5% higher, and after five years, it is 13.7% higher. Furthermore, the Metro Toronto rates have been increased by 7% for 1989, and 7% for 1990.

The special case is resisted by the employer, on the grounds that Ambulance Officers in the Institutional Care Category work throughout the Province and Metro Toronto Officers only work in the higher paid Metro Toronto

region, and that there is no history of parity between the two groups. The union has responded by noting that the separation between the two Services is not a clean one, as the Ambulance Officers in the Institutional Care Category are the second largest group, and they routinely come into Toronto.

After reviewing these and other submissions, it is our conclusion that it is not appropriate at this time to adjust the rates of Ambulance Officers by a comparison with the Metro Toronto Service. The Metro Toronto rates result from a collective bargaining relationship which is based on factors that have not been sufficiently explored at this time. We accordingly make no additional award in this respect.

The union has submitted that Ambulance Officers, Air, comprise a further special case within the Ambulance Officer group, and are entitled to a further 5% wage increase above that sought as a special case for the group. The union's case is based on a number of factors, including: additional knowledge and skills required; additional training and responsibilities; the small space in which those Officers are confined for long flights, involving additional physical and nervous strain; and the question of safety. With respect to safety, the union has provided evidence of a number of tragic air accidents, some of them quite recent, in which Ambulance Officers have lost their lives.

The employer has essentially responded that it would be premature to provide a premium for Ambulance Officers who work in the Air Ambulance Service. A number of classification grievances have been launched by Ambulance Officers who perform Advanced Life Support duties, and a further number by Ambulance Officers in the Air Ambulance Service. A settlement of all these grievances has included a commitment to review the relevant class standards, which would

include a full job evaluation. The employer has submitted that the review will produce an appropriate determination of any distinction in the work of those Ambulance Officers in the Air Ambulance Service, and later, through negotiation and arbitration if necessary, an appropriate wage level.

The union has responded that such a review will not necessarily focus on distinctions found in the Air Ambulance Service, and that it will take a long time for the review to produce a wage differential, if any. The union noted further that the distinctions it noted in support of its special case, were not challenged by the employer, and if the case has been made, that should be recognized at this time.

We have reviewed a substantial amount of material on this issue, including the agreement between the Ministry of Health and OPSEU respecting the review, and other documentation including clippings of the unfortunate accidents referred to above. The agreement is not directed in particular to the situation of Ambulance Officers in the Air Ambulance Service, although it may be considered as including that situation where it says in paragraph 1, that:

> "The employer agrees to revise the class standards for the Ambulance Officer series incorporating the responsibilities of Basic Life Support and Advanced Life Support in both land and air based provincial ambulance services as applicable."

The issue before us may therefore, also be considered directly in that review, but it will be some time before that consideration is completed, and further time if any question of wage differential for those in the Air Ambulance Service goes to arbitration. At the moment, a documented and well-

argued case in respect of such a differential is before us, and that case has not been challenged on the merits at this hearing.

In view of the additional knowledge, skill and responsibilities involved, including, for example: a knowledge of baro-medicine (altitude) on a patient, a consequent responsibility to advise re flight altitude; the operation of advanced patient care equipment and care of the patient in a craft which may move in three directions, sometimes violently; and the requirement to perform those skills in a dangerous and regrettably, sometimes fatal environment, we are satisfied that the special case has been sufficiently made at this time. We also conclude that any agreed-to review is sufficiently indeterminate in its content and time-scale that it would be inappropriate to refuse to respond to this special case to await the results of such a review.

We therefore award an increase of 5% to Ambulance Officers in the Air Ambulance Service effective January 1st, 1989, for all paid hours including overtime worked. Such increase is in addition to the 6.5% general increase awarded above, for a total increase for that group of 11.5%.

Pension Rate Increase Protection

The union has requested a 1% increase in wages to protect such wages from any increase in the employee's contribution to the pension fund. In view of the fact that this issue has been raised in all the wage categories negotiated to date, but forms no part of any of the four negotiated settlements, we decline to make an award on this matter.

Implementation

The union has requested that we order this award to be implemented within thirty days of its date. The employer has responded by noting difficulties in the implementation of an arbitration award, and proposed that the board order that the employer endeavour to implement the board's award within fifty days of receipt, but in any event no later than sixty days of receipt of the award, and that the order be made a term of the agreement. We adopt the reasoning of prior boards on this matter, and order that the employer endeavour to implement this award within fifty days of receipt, but in any event no later than sixty days of its receipt, and we further order that this requirement be made a term of the agreement.

Interest on Retroactive Payments

The union has requested that the board order interest to be paid on the wage retroactivity to January 1st, 1989. Its submission is based on the further delay produced by compulsory arbitration when compared to settlements where there is a right to strike. In support, it has produced a statistical summary prepared by the Ontario Ministry of Labour, as follows:

TABLE 6

Average Number of Days From Expiry to Ratification
in Ontario Settlements -- 1985-87
Collective Agreements Covering
200 or more Employees

	Private Sector	Public Sector With Right to Strike	Public Sector With Compulsory Arbitration
1985	79.3	145.2	195.5
1986	64.9	181.6	253.3
1987	70.6	132.6	260.3
1988	80.4	159.5	110.9 (234.1)*

NOTE: If ratification precedes or coincides with the expiry date, the number of days is zero.

*Excluding the Nurses, who ratified their settlement before the expiry date of their previous agreement.

SOURCE: Ministry of Labour

The employer has responded that interest is punitive in nature, that the delay is not the sole responsibility of the employer, and that such awards are infrequent or non-existent.

We have considered at some length the positions summarised here, and view the question of interest as follows.

First, it is quite clear on the basis of the data supplied that compulsory arbitration delays ratification. There is of course a further delay for implementation, but we cannot assume that that further delay is unique to compulsory arbitration.

Second, the delay in Ontario public sector settlements with right to strike has averaged under two hundred days for the last few years, and significantly under in some years. The payment or not of interest in such

cases is a matter of exercise of economic power between the parties. It has nothing to do with delay caused by compulsory arbitration.

Third, the delay in Ontario public sector settlements with compulsory arbitration has averaged significantly over two hundred days from 1986 on (excluding the Nurses' ratification shown in the table). It is a simple conclusion that the factor of right to strike maintains ratification within a two hundred day window, and the factor of compulsory arbitration extends ratification well beyond that window.

Fourth, delay in a right-to-strike system results from an economic contest in which both parties bear varying degrees of responsibility for the delay. It is highly likely, if not certain, that in practically every case, delay in the compulsory arbitration system, at least beyond two hundred days (for example), is largely attributable to delays in the compulsory arbitration process itself. It would be hard to conclude otherwise on the data we have.

Fifth, a compulsory arbitration system is not the choice of the parties: it is imposed by government, which wishes to avoid strikes. Government is therefore the initial and prime author of the extra delay caused by compulsory arbitration, and it accordingly bears prime responsibility for the financial loss caused by the extra delay in payment of retroactive wages resulting from a consequent award.

It is reasonable, fair, and just, therefore, that employees should be made whole, or compensated, for any loss they have suffered which arises directly from delay initiated primarily by a government policy of compulsory arbitration. Such employees have lost the use (and the opportunity to invest,

or pay off interest-bearing debts) of their increase in wages, and they can be compensated for that loss by an appropriate award of interest on retroactive pay, expressly designed for the purpose of making them whole for the delay attributable to compulsory arbitration.

We do not give any weight whatsoever to arguments that such an award is punitive. Its effect is to make the employee whole in respect of wages for a delay occasioned by the employer, and in respect of work already performed, and it is no more punitive than any single payment of wages is.

With these principles in mind, we make the following award with respect to interest. As a first step in this area, the award is designed cautiously and with a limited reach, and we expect it to be subject to refinement if adopted again in future years.

We award payment of simple interest on a per annum basis on the total retroactive wages with such interest commencing on the day after two hundred clear days have passed since the expiry of the collective agreement herein (December 31st, 1988). The interest is to be calculated at the bank prime rate which exists on the two hundred and first clear day after expiry, or the first business day thereafter if that clear day is not a business day, on one-half of the total retroactive wages owing at the date of their payment. Such interest to be paid at the same time as the retroactive wage payment required earlier herein.

That completes our award with respect to interest, but we would add the following for clarification. No interest is payable on retroactive wages which have been received within two hundred clear days of expiry to the collective

agreement, as any such delay is not necessarily attributable to compulsory arbitration. The simple interest formula, and its application to one-half the total of retroactive pay, further reflect that principle, and the fact that the employees have not, of course, lost the use of the entire pay for the entire period. An example application would be as follows. For a collective agreement expiring on December 31st, 1988, two hundred clear days would have passed by the end of July 19th, 1989. If the bank prime rate on July 20th, 1989 were 7%, then simple interest at 7% per annum would be payable on one-half that total of retroactive pay when received by the employee, for example sometime in February, 1990.

We remain seized to clarify any aspect of this award, and in particular, to assist the parties if required in respect to our award on interest.

Dated at Ottawa
this 19th day of January, A.D. 1990

D. Fraser, Chair

(see Dissent attached)
George J. Milley, Employer Nominee

(see Partial Dissent attached)
Brian Switzman, Union Nominee

T/0048/88

OPSEU and The Crown in Right of Ontario
Institutional Care Category

D I S S E N T

George Milley
Employer Nominee

I have reviewed the award of the Chair and for the reasons which follow, I disapprove of the conclusions reached.

GENERAL INCREASES

On the matter of salaries, no viable reason was given to justify increases beyond that of the other four Public service categories already negotiated. It does little for Collective Bargaining when one party refuses to accept the going rate in wage settlements, strikes out on its own to arbitration, and is awarded a higher increase than the other categories. Such a process is not one designed to promote voluntary settlements or to encourage free Collective bargaining.

The award gives weight to the so-called deterioration of the ratio in salaries between Psychiatric Nursing Assistants and Counsellors on the one hand and Registered nurses on the other. However, it was emphasized by the Employer and unchallenged by the Union that no conscious salary ratio between these groups has ever been recognized and even if one existed it was nothing more than a statistical coincidence. That this is so is confirmed by the fact that the first time such a ratio was claimed by the union was before the 1988 arbitration board. At that time, arbitrator Saltman referred to a decision Re The Crown in Right of Ontario and The Ontario Public Service Employees Union;

Maintenance Services Wage Bargaining Category, October 10,1985 (Kennedy unreported), wherein he said that a wage relationship to be valid, must be consciously established. Ms. Saltman dismissed the Union,s claim stating:

> "In our view, no historical relationship has been established as there is no indication that the parties consciously bargained on the basis of a relationship between the P.N.A.'s and R.N.'s"

Further, as stated by the Chair, there are approximately two counsellors for every P.N.A. and, notwithstanding the rates of the two classifications are the same, it is somewhat injudicious to suggest the rate of P.N.A., in these circumstances, should be used as a basis for increasing the rate of the vastly larger group of Counsellors.

The award, on page 4, seeks to persuade the reader that Section 12(2)(c) of C.E.C.B.A. mandates the Board to consider the relationship between the P.N.A. and the R.N. in The Public Service on the one hand and the relationship between the Registered Nursing Assistants and Registered Nurses in General Hospitals on the other as being similar and appropriate relationships for salary comparisons. With respect, I think the author ought to spend a little more time on this. First, it needs to be determined what an "Appropriate Relationship" means. It is commonly accepted that in order to make a reliable judgement on such an issue, it would first be necessary to have some evaluation of the work, duties and responsibilities of the positions in question. No such evidence or evaluation was presented to the Board.

WORKING CONDITIONS

The award also gives weight to alleged difficulties in working conditions. Again, there was no evidence ofany changes or difficulties in working conditions of the vast majority of the employees - the Counsellors. Nevertheless, they are the beneficiaries of whatever amount the award attributes to the working

conditions of the P.N.A."s.
In fact, the Board is not in a position to give any weight to the factor of working conditions of the P,N.A.'s or anyone else without extensive evidence on the job content of the classifications. In The Public Service salaries are based on Class Standards and Job Specifications. While the Union asserted that working conditions were difficult and had deteriorated, no viable evidence was presented to substantiate this. No class Standards were presented to show that P.N.A.'s were performing work outside their class Standards nor was any comparison made to show that the work performed by today's P.N.A. is more onerous than that heretofore. The assessment or determination of working conditions requires a standard or specific criteria against which to measure it.It cannot be guided by self-serving newspaper clippings. This Board did not have such a standard or criteria; it was not established to undertake such a task and it did not go through that exercise. As such its conclusion could not be anything less than wholly subjective and its recommendations unreliable.

SPECIAL CASES: AMBULANCE OFFICERS - AIR

The award grants an increase of 5% to Ambulance Officers in the Air Ambulance Service. In the circumstances, I can only regard this action as unfortunate, inexcusable and presumptuous. As the award outlines, a Job Evaluation, a review of Class Standards and negotiations affecting this classification are now in progress between the parties. In fact, documents have already been exchanged and reviewed. In its brief to the Board the Employer said:

> "It is this type of review which will provide the basis for a determination of the appropriate distinctions and wage levels in the Ambulance Officer Class Series.
>
> The Union is currently obtaining the required signatures from the grievors to finalize this agreement. The Employer. therefore, requests that the Board make no award with respect to this proposal."

In the light of these facts and notwithstanding, the Chair, on page 9, states; " It will take some time before that consideration is

completed, and further time if any question of wage differential for those in the Air Ambulance Service goes to Arbitration. At the moment, a documented and well-argued case is before us, and that case has not been challenged on the merits at this hearing."

I find it somewhat incredible that an arbitrator would knowingly so undertake to interfere with the normal process of C ollective Bargaining. Such an action could very well upset the delicate balances that normally exist in the bargaining process and compromise or prejudice the success of the whole effort. The function of the Board is to try and resolve problems between the parties, not to inject itself into situations where it does not belong and create them. The parties should be left free to conclude their negotiations. Whether the process is long or short is not a matter for the Board to involve itself in. The procedures dealing with Job Evaluation, Class Standards and consequent rates are adequately provided for in the collective Agreement and are not before this board for adjudication.

INTEREST ON RETROACTIVE PAYMENTS

The award of Simple Interest on the total retroactive wages, commencing on the 201st day following the expiry of the Collective Agreement is, if nothing else, provocative.
The Chair bases h is conclusion on a table showing the average number of days from expiry to ratification in Ontario Private Sector settlements; in the Public Sector with the right to strike; and in The Public Sector with cumpulsory arbitration.

His analysis of the table leads him to the conclusion that delay in the cumpulsory arbitration system is largely attributable to the cumpulsory process itself. Since cumpulsory arbitration is imposed by the Government; Government bears the prime responsibility for the financial loss caused by the extra delay in

payment of retroactive wages resulting from the consequent award. Employees, therefore, should be made whole for any loss resulting from the Government's policy of cumpulsory arbitration. We do not give any weight whatsoever, he says, to arguments that such an award is punitive.

In passing, it might be noted that cumpulsory arbitration does not require ratification in the Public Sector herein and only rarely elsewhere. Respecting the matter of punitive awards, the Chair appears to be directly at odds with the opinion expressed by the experience arbitrator, Michel Picher, in his 1985 award for the Administrative Services Category:

> "It is well settled that a board of arbitration or a labour board may make an order for payment of interest as part of its direction for compensation. It may only do so, however, if its order is compensatory and not punitive. In other words, the order for the payment of interest is not conditioned on the conduct of the party against which the order is made, but is intended narrowly and exclusively to make the other party whole from a real financial loss it would otherwise suffer. This foregoing approach hs been scrupulously followed by both boards of arbitration and the Ontario Labour Relations Board in making compensatory orders of interest where it has been established that there has been a violation of the collective agreement or of the Ontario Labour Relations Act, as the case may be, with a resulting financial loss to the grieving party."
>
> (Emphasis added)

Our award purports to make the employee "whole" for the delay attributable to cumpulsory arbitration. But, from the foregoing quotation, it is clear that to be made "whole" the party would otherwise have to suffer a real financial loss. In the present case this is not so as it cannot be said that the non-payment of interest would be a financial loss. Clearly, one has to be cognisant of the difference between a "rights" dispute and an "Interest" dispute.

TO conclude that the delay in cumpulsory ar bitration is attributable to the cumpulsory arbitration process itself in the Public Service appears to be an over-simplification.

There are many factors which might shorten or prolong the negotiation process. For example: table 6 does not indicate whether the Public Sector cumpulsory arbitration data in column 3 includes negotiations on working conditions as well as wages. Since it does not exclude it, we must assume that it includes it. The number of fringe benefits and working condition issues contained in the Public service Agreements normally exceed those of the Private Sector agreements and as such would be expected to consume more negotiating time with or without cumpulsory arbitration. It is a principle accepted by the parties that Public Sector increases ought to correspond to those of the Private sector. We have no way of knowing, therefore, what delays, if any, were occasioned by enabling the private sector to lead the way in some types of negotiations. It is also noted that in 1988, the Public sector with cumpulsory arbitration was well in advance of the public sector with the right to strike.

More importantly, all eight categories comprising the service-wide bargaining unit of some 50,000 employees, of which Institutional care is but one, bargain separately for wages alone. Working conditions are also bargained separately and included in a Master Agreement covering the eight categories. Thus, in the Public Service there are two sets of negotiations covering each category and this must invariably prolong the negotiating process. Conversely, private sector negotiations normally include both wages and working conditions simultaneously. It appears, therefore, insofar as it applies to the Institutional Care category, the table is a mix of apples and oranges. As such, its benefit as a criterion cannot be considered reliable. If the table measured the elapsed time dealing with wage negotiations alone, excluding working conditions, the figures would likely

be much less in the cumpulsory arbitration category. Thus, the information available from the table would appear to lack specificity and be unreliable data on which to establish payment of retroactive interest and on which to devise a formula for payment of such interest.

Finally, who is to say that cumpulsory arbitration is less attractive to the employee, financially, than the right to strike? The award implies that this is so. But there are many factors which are not considered. What of the economic penalty suffered by the striking employee who walks the picket-line without pay? What of the employee who loses his job because of the marginal employer who closes his shop as a result of the strike? What of the consequent reduction in staff and layoffs following a strike? It can be argued with some validity that the cumpulsory arbitration Public Service employee enjoys the best of both worlds; He does not have to walk the picket line, yet, the principle is well established by arbitrators and scholars that he is entitled to and should be treated no less favourably in wage negotiations than his counterpart in the Private sector.

It is also significant that each of the other four categories in the group renewed their agreements through negotiation **WITHOUT** payment of interest. It is strange that a proposition which is acceptable and fair across the table suddenly becomes unacceptable and unfair before an arbitration board!

In the light of the above, the Chair's position that the Governmant as prime author of the extra delay bears the prime responsibility for the financial loss would appear to be something less than convincing.

IMPLICATIONS OF INTEREST AWARD

What are the implications of this unique award that employees be paid interest on retroactive wages commencing on the 201st day following the expiry of the Collective agreement?

The most obvious one and perhaps the most serious is that it will tend to destroy any incentive on the part of the Union to reach a negotiated settlement. What do I have to lose if I can go to arbitration and get interest on retroactive pay?

Secondly, there is no automatic right that salary increases be made retroactive to the beginning of the new contract. The awarding of interest will, in all likelihood, stiffen the resolve of the Employer in future against retroactive salary increases.

Third, the reasons for delays in the negotiating process and many and varied. In a number of cases they are consensual and cannot be attributed to one party or the other. For example: a union may be in separate negotiations on behalf of two groups; one of 50 employees and one of 5000. Both sides may be undesirous of having the smaller group set the pattern of settlement for the large group and may thus agree to bide their time for the large group to settle first and set the pattern. In other instances, the union itself may see advantages in prolonging negotiations until other groups have set the pattern. In instances such as these, why should the employer be saddled with the responsibility for the delay and assessed the interest costs after 200 days?

For the above reasons, with respect, I consider those parts of the award unacceptable for the reasons outlined.

Respectfully submitted,

George J. Nicholson

December 27,1989

IN THE MATTER OF AN INTEREST ARBITRATION UNDER THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

BETWEEN: **THE CROWN IN RIGHT OF ONTARIO**

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE INSTITUTIONAL CARE CATEGORY

D I S S E N T - I N - P A R T

There are certain very positive and long overdue improvements in this award with which I fully concur.

After extensive review of the data the Chairman has awarded a cautious, first step approach of interest on retroactive monies owed to these employees. In so many other awards it has been recognized that retroactivity without interest is an incomplete award. Indeed as stated in The Supreme Court of

Ontario, Divisional Court Decision in the matter of the Judicial Review Procedure Act, R.S.O. 1980, C224; In regards to a decision of the Grievance Settlement Board (Oct. 1, 1985), grievances of Thibert, Jung and McGill at page 13;

> "The Crown is one of the 'parties' referred to in s.19(1). Neither the agreement nor the Act authorize an award of interest in express terms, but the Board was authorized to make a 'final and binding' decision as to 'any differences' between 'the parties'. The Board did exercise its discretion to substitute reinstatement with compensation for lost wages; after deductions for income received from other employment, this loss extended back over several years. For reasons stated earlier, failure to award interest in 1985 on wages lost in earlier years means, in effect, that the grievors would receive only part of the value of the loss for which compensation was ordered. In my opinion that would amount to a failure of justice; and such a result would not have been intended by the legislature. Interest was one of the 'differences' that arose between the Crown and the grievors during the arbitration." (Emphasis added)

Certainly in the very near future full interest payment on all retroactive monies owed must become the normal standard for compulsory arbitration.

These employees did not choose this procedure. They ought not to be further penalized by having the inherent cost and delays in this process all laid at their doorstep. The full payment of interest would restore a semblance of fairness to compulsory arbitration. For a future board of arbitration not to follow this lead would create a situation in which its very neutrality could be questioned.

I am also in full agreement with the Chairman's award for those in the air ambulance service. It is simply a canon of any bargained remuneration system, that adding additional requirements of knowledge, skills and responsibilities, ought to lead to an increase in wages.

However, in two significant areas I must with respect, dissent from the award of the Chairman.

The ambulance service directly organized under the Ontario Public Service is the second largest in Ontario - second only to the one in Metropolitan Toronto. All other local ambulance services in Ontario are significantly smaller than these two.

In the past, certain chairman have not granted additional increases to the O.P.S. ambulance driver/attendants because they rejected a comparison with Metro workers and instead accepted a comparison with these other small ambulance services. I am pleased that the chairman in his award has not accepted this approach. However, he has chosen not to make any award in this area. I cannot agree.

Consistently the employer has claimed that the strike/lockout mechanism found in the private sector ought to set the pattern for O.P.S. employees' remuneration. Yet in this situation the employer will not recognize this approach. The Metro

ambulance drivers/attendant through their bargaining strength are paid more than 14% higher than the O.P.S. employees who are prohibited by this employer from taking strike action. Instead the employer seeks to compare these employees with those who work in small, isolated units with far less bargaining strength than the O.P.S. could command. Surely common sense says that under any labour relations bargaining reality the Metro comparable is a compelling one. I would have narrowed the 14% difference by awarding 5% as an additional payment to all those in the O.P.S. ambulance service.

Finally, I am unable to agree with the Chairman's disposition of the general wage increase. These employees play a vital role in the provision of direct care to the citizens of Ontario. Their role is of such importance that they are denied the right to the usual collective bargaining resolution mechanism to obtain the remuneration they deserve.

Within this category more than 75% of the employees are classified as Residential Life Counsellors or Psychiatric Nursing Assistants. They are involved in direct patient and resident care. As members of health care teams, which include registered nurses, they are directly involved in: the provision of physical and psychological treatments; the monitoring of the patient's or resident's progress; team analysis of the patient's or resident's health status; and all other facets of the direct care programs.

It is also undisputed, that under the government's policy of deinstitutionalization, those who remain for the provision of care in our public institutions requires the most intensive standards of care and in turn are often the most difficult patients and residents to work with. Yet at the present, the top wage paid to these dedicated care givers is $12.89. At a time when the general labour factory rate in unionized shops in this province is significantly higher, this present wage rate is simply unacceptable.

I am pleased that the chairman has recognized the significance of the 75% ratio in regards to R.N. and the P.N.A. and Counsellor rates. A review of the wage rates produce the following:

Comparison of PNA and RN
Maximum Rates -- 1975-1988

	PNA	RN	%
1975	198.80	263.33	75.5
1976	218.00	288.81	75.5
1977	234.40	315.67	74.3
1978	247.20	339.08	72.9
1979	262.40	359.93	72.9
1980	292.80	392.32	74.6
1981	322.00	442.48	72.8
1982	365.20	499.08	73.2
1983	384.00	523.34	73.4
1984	408.80	547.41	74.7
1985	426.80	598.34	71.3
1986	460.00	623.47	73.8
1987	491.20	662.53	74.1
1988	515.60	714.48	72.2

From the mid 1970's the 75% tie point is the mode for the settlement with these employees. Then in the early 1980's during the period of the Inflation Restraint Act and Bill 180 which followed, the government distorted this pattern. However, immediately after in an award chaired by Mr. H. Brown the 75% ratio was just about completely restored. Yet in 1986, in a decision of a board chaired by Ms. Jane Devlin, she did not pursue the historical tie point and based on reasoning with which I cannot agree she awarded a lower rate of pay for these employees.

Directly after this award, the parties took this issue into their own hands. On their own agreement, without resort to arbitration, in a two year deal spanning 1986 and 1987, the parties agreed to increases which closed the differential to 74.1%. Surely that must be a most significant consideration for our board.

The employer has argued that a tie point between different categories of employees must be based on job comparability and on evidence to show that this tie point was patently enunciated in the parties bargain. These arguments must be rejected.

In establishing the 75% tie point between R.N.'s and R.N.A.'s in the public hospitals, Kevin Burkett in his 1977 Wellesley Hospital/O.N.A. Award required neither of the conditions argued by the government in this case. Rather Mr. Burkett stated;

"The Board has chosen the RNA classification as the appropriate tie point. The Board has selected this tie point for the following reasons. Firstly, the registered nursing assistant belongs to the same work group as the registered nurse. Secondly, the registered nursing assistant is a member of the service unit which includes classifications found in the private sector. Thirdly, the registered nursing assistant is covered by a collective agreement extending to March 31, 1978 and fourthly, there is evidence before the Board which establishes the existence of a historical differential of 74 per cent or 75 per cent between the start rates for the registered nursing assistant and the registered nurse on the basis of weighted average monthly rates, the parties themselves negotiated a differential of just under 75 per cent for the 1975 calendar year."

Surely these patient and dedicated employees ought to receive the appropriate consideration from the arbitration process. At the very least I would have awarded an increase to this category sufficient to bring the P.N.A. and the Residential Life Counsellors up to 75% of the R.N.'s maximum rate.

Dated at Toronto, Ontario this 16th day of January, 1990.

Respectfully submitted,

"Brian Switzman"
Brian Switzman
Union Nominee

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Labour
Relations
Tribunal

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T/0039/89

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, R.S.O. 1980, C.108

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

Between

Metropolitan Toronto Convention Centre Corporation
Complainant

- and -

Textile Processors, Service Trades, Health Care,
Professional and Technical Employees
International Union, Local 351 A

Respondents

BEFORE:	M. Ingram	Chairperson
	N. Beland	Member
	R. McArthur	Member
FOR THE COMPLAINANT:	B. Fishbien Counsel Koskie & Minisky Barristers & Solicitors	
FOR THE RESPONDENT:	R. A. MacDermid Counsel Kerzner, Papazian, MacDermid Barristers & Solicitors	

IN THE MATTER OF AN ARBITRATION PURSUANT TO SECTIONS 11 AND 12 OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING AID

B E T W E E N:

METROPOLITAN TORONTO CONVENTION CENTRE CORPORATION

- and -

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, LOCAL 351 A

Before:
Michael B. Ingram, Chairman
Board Members, Nicola Beland and Robin W. McArthur

B. Fishbien for the Union
R.A. MacDermid for the Employer

A W A R D

The employer, pursuant to the Metropolitan Toronto Convention Centre Corporation Act, S.O. 1988, c.52, is a Crown Agency within the meaning of the Crown Agency Act, R.S.O. 1980, c.106. Accordingly, labour relations between the parties are governed by the Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108. The Ontario Public Service Labour Relations Tribunal granted representational rights to the Union on October 10, 1989. Prior to that date the Union and the Employer

commenced bargaining to settle the terms of a collective agreement on or before about August 22, 1989. The basis of these negotiations was a previous collective agreement dated January 16, 1987 between Teamsters Local 847, (Local 351 assigned its bargaining rights to Teamsters Local 847) and the employer. There is presently no collective agreement between the parties.

The parties in their negotiations have agreed on many issues for which they are to be commended. The matters agreed on are set out in a 14 page memorandum dated February 8, 1990. We have incorporated these agreed on terms in the collective agreement we have ordered the Union and the Employer to enter into.

We are to decide, pursuant to sections 11 and 12 of the Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108, all other matters in dispute between the parties.

This arbitration originally come on for hearing on April 6, 1989 before another chairman. Unfortunately, the chairman became ill and had to be replaced. Fortunately, the parties have proceeded by way of agreed facts, and have jointly submitted the following documents for our assistance:-

1. OLRB Certificate dated July 17, 1986
2. Former Collective Agreement dated January 16, 1987
3. Metropolitan Toronto Convention Centre Corporation Act
4. Application for Representation Rights

5. Regulation Designating Metropolitan Toronto Convention Centre Corporation the Employer
6. OPSLR Tribunal Decision dated October 10, 1989
7. Memorandum re Union's Proposals dated August 22, 1989
8. Metropolitan Toronto Convention Centre Corporation's Responses and Proposals dated September 18, 1989
9. Memorandum re Summary of Matters Agreed to as at October 25, 1989
10. Memorandum re Outstanding Issues as at February 8, 1990
11. H.E.G.T. and Local 75 Memorandum of Full Settlement dated December 7, 1989
12. H.E.G.T. and Local 75 Collective Agreement 1987 - 1990
13. Metropolitan Toronto Convention Centre's Final Offer Compared to H.E.G.T. Actual Settlement
14. Metropolitan Toronto Convention Centre's Group Insurance Plan

Written submissions were made by counsel for the Union which made is possible for me to fully acquaint myself with the employers portion before reconvening on April 16, 1990 to receive and hear the Union's submissions.

Having reviewed all the evidence and the able arguments of counsel, it is the award of this Board that the parties enter into a collective agreement in the form of the collective agreement attached to this award as Schedule "A".

In the event that there is any dispute with respect to the implementation of this Award, the Board shall retain jurisdiction to deal with such issues.

All of which is respectfully submitted.

Dated at Toronto this 27th day of April, 1990.

CHAIRMAN

"N. Beland"

BOARD MEMBER

"R. McArthur"

BOARD MEMBER

SCHEDULE "A"

THIS AGREEMENT dated the day of , 1990.

B E T W E E N:

METROPOLITAN TORONTO CONVENTION CENTRE CORPORATION
(hereinafter called the "Employer")

OF THE FIRST PART

- and -

TEXTILE PROCESSORS, SERVICE TRADES, HEALTH CARE, PROFESSIONAL AND TECHNICAL EMPLOYEES INTERNATIONAL UNION, Local 351A
(hereinafter called the "Union")

OF THE SECOND PART

ARTICLE 1 - PURPOSE

1.01 The general purpose of this agreement is to establish and maintain mutually satisfactory working conditions, hours and wages, all as set out herein and to provide the applicable procedure for settling grievances which may arise hereunder, so as to maintain harmonious relations between the Employer and employees covered by this agreement and to assist the Employer in the most efficient operation of its business.

ARTICLE 2 - SCOPE

2.01 The Employer recognizes the Union as the exclusive bargaining agent for all employees of the Employer employed in the Municipality of Metropolitan Toronto save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, security staff and casual employees.

2.02 For the purposes of this agreement:

(a) "Full time employee" means an employee employed in the bargaining unit described in Article 2.01 who is regularly scheduled to work more than twenty-four (24) hours per week;

(b) "Part time employee" means an employee employed in the bargaining unit described in Article 2.01 who is regularly scheduled to work twenty-four (24) hours per week or less;

(c) For the purposes of Article 2.01, a "casual employee" is a person who works as needed on a call-in basis by event or function.

2.03 For the purposes of determining whether or not an employee is regularly scheduled to work more than twenty-four (24) hours per week under Article 2.02, a majority of the weeks in the twenty-six (26) week period prior to the date of determination is to be used.

2.04 The terms and conditions set forth in this agreement shall have full force and effect for all full time employees in the bargaining unit described in Article 2.01. Only the following provisions apply to part time employees described in Article 2.02(b) and students:

(a) Article 5 - Union Dues;

(b) Articles 8 and 9 - Grievance Procedure;

(c) Article 11.01(a) and (b) - Probationary Period;

(d) Article 11.10 - Seniority Rights for Part Time;

(e) Paragraph A.09 of Schedule "A" up to a maximum of one half (1/2) of their regularly scheduled hours for the day involved; and

(f) The wage rates including the probationary rates set out in Schedule "B".

2.05 Casual and Part Time Employees shall pay Union dues once the Union provides for a percentage of earnings formula for such dues.

ARTICLE 3 - MANAGEMENT RIGHTS

3.01 It is the exclusive function of the Employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,

(a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions; and

(b) merit system, training and development, appraisal and superannuation.

ARTICLE 4 - RELATIONSHIP

4.01 The Employer and the Union agree that there will be no discrimination, interference, restraint or coercion exercised or practised by the Employer or the Union or by any of their representatives, with respect to membership or non-membership in the Union. The Union agrees that no Union member will conduct union activities on the premises of the Employer except as specifically permitted by this agreement or with the written permission of the Employer.

ARTICLE 5 - UNION DUES

5.01 The Employer agrees to deduct Union dues from the bi-weekly earnings of each employee in the bargaining unit described in Article 2.01.

5.02 The Union dues deducted will be a fixed dollar amount per pay which amount the Union will certify to the Employer to be currently in effect according to the Union's constitution. The

required deductions shall be made for each pay period and shall be remitted within fifteen (15) days after the month in which such deductions are made to the designated officer of the Union. The Union shall advise the Employer of the name, position and address of the aforementioned designated officer and its failure to do so shall relieve the Employer of its obligation to remit the deductions herein provided for until the Employer is so advised.

5.03 When a probationary employee completes the probationary period, he or she shall pay to the Union an amount equivalent to the Union's initiation fee which sum shall be deducted by the Employer from the employee's earnings and remitted to the Union when the monthly dues are remitted to the Union under 5.02. The Union will give the Employer written notice of the amount to be deducted as herein provided and, unless the Company is so notified, the Company is under no obligation to deduct such amount.

5.04 Section 16(3) of the Crown Employees Collective Bargaining Act provides that "no collective agreement shall contain a provision which would require, as a condition of employment, membership in the Union".

5.05 The Union agrees to defend and hold the Employer completely harmless against all claims and demands, should any person at any time contend or claim that the Employer has acted wrongfully or illegally in making the aforementioned deduction for Union dues.

5.06 The Employer shall show the yearly Union dues deductions on the employee's T-4 slip.

ARTICLE 6 - REPRESENTATION

6.01 The Union may select one (1) shop steward with at least one (1) year of seniority to represent employees employed in each of Banquet, Beverage, Stewarding, Kitchen, Event Services, Housekeeping, Maintenance and Parking Departments. In addition, the Union shall be entitled to select one (1) employee with at least one (1) year of seniority to act as the Chief Steward.

6.02 The Union may appoint a bargaining committee to be composed of the persons appointed under 6.01 to be the representatives of the employees in the departments therein described. The Employer shall compensate each member of the bargaining committee at his or her regular straight time hourly wage rate for time lost from work on their scheduled day of work while attending to negotiations. The payment of the bargaining committee shall include the reimbursement of the food and beverage banquet stewards, not to exceed 2, for the gratuities they otherwise would have earned on a function for which they were scheduled to work but did not work because they were participating in collective bargaining with the Employer.

6.03 The Union will inform the Employer in writing of the identity of the stewards and the Employer shall not be obliged to recognize such personnel until it has been so informed.

6.04 No steward, Union committee member or Union official employed by the Employer may leave his or her regular duties without the permission of his or her supervisor in order to attend to Union business. Such person shall not be so absent for more than a reasonable period of time in order to attend to the matter. Upon his or her return to his or her regular duties after having secured such prior permission, he or she shall give any explanation

reasonably required by his or her supervisor to explain the duration of his or her absence.

6.05 For the purposes of this agreement, the stewards, together with the officers of the Local Union and the Negotiations Committee, shall be deemed to be officials of the Union. The parties hereto agree that these officials occupy positions of leadership and responsibility to see that this agreement is faithfully carried out.

6.06 The representative of the Union will advise the Director of Human Resources or his or her designate of any visit he or she intends to make to the Employer and such visits shall not interfere with the work the employees are performing.

6.07 Subsequent to an employee's discharge, an employee shall be allowed to confer with a steward, if one is available, for a reasonable period of time before leaving the premises.

ARTICLE 7 - NO STRIKES OR LOCKOUTS

7.01 There shall be no strikes or lockouts so long as this agreement continues to operate. The Crown Employees Collective Bargaining Act defines a strike and a lockout as follows:

> " 'Strike' includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output;
>
> 'Lockout' includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of its employees, with a view to compel or

> induce its employees, or to aid another employer to compel or induce its employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the Employer, the Employee Organization or the employees."

7.02 Any employee who participates in any of the foregoing conduct shall be subject to discipline including discharge.

7.03 If an illegal strike occurs, the Union will instruct the employees involved to carry out the provisions of this agreement and to return to work and perform their duties in the usual manner.

ARTICLE 8 - GRIEVANCE PROCEDURE

8.01 Wherever the term "grievance procedure" is used in this agreement it shall be considered as including procedures described in Articles 8 and 9.

8.02 The Employer shall be under no obligation to consider or process any grievance unless such grievance shall have been presented to the Employer in writing at Step No. 2 of the grievance procedure within five (5) days from the time the circumstances upon which the grievance is based were known or should have been known by the grievor.

8.03 All time limits referred to in the grievance procedures contained in Articles 8 and 9 shall be deemed to mean "working days". "Working days" as used herein shall be deemed to exclude Saturdays, Sundays and paid holidays.

8.04 There shall be an earnest effort on the part of both parties to settle any grievance promptly through the following steps:

Step No. 1

By a conference between the aggrieved employee and his or her immediate supervisor. The employee may be accompanied by his or her area steward. The immediate supervisor shall give his or her decision within two (2) full working days. Failing settlement...

Step No. 2

At this step, the grievance shall be reduced to writing and presented to the Department Head within the aforesaid time limits, but not thereafter. The written grievance shall set out the facts giving rise to the grievance and shall advise the Employer of the nature of the claim so as to enable the Employer to deal with the grievance, and shall be signed by the employee. The Department Head will give his or her written reply to the grievance within three (3) days. Failing settlement then...

Step No. 3

A meeting will be held with the grievor's area steward and the Director of Human Resources within three (3) days after the Department Head has given his or her written reply. The grievor may be required to be present at the request of either party. A representative of the Union may be present, if requested by either party. The Director of Human Resources shall give his or her written reply to the grievor's area steward within three (3) days of such meeting.

Step No. 4

In the event the grievance is not settled at Step No. 3, the party having carriage of the grievance may request arbitration of the grievance pursuant to section 19 of the Crown Employees Collective Bargaining Act.

8.05 Union Policy Grievance or Employer Grievance

(a) A Union policy grievance or an Employer grievance may be submitted to the Employer or the Union, as the case may be, in writing within seven (7) days from the time the circumstances upon which the grievance is based were known or should have been known by the grievor. A meeting between the Employer and the Union shall be held within five (5) days of the presentation of the written grievance and shall take place within the framework of Step No. 3 of Article 8.04 hereof. The Employer or the Union, as the case may be, shall give its written decision within three (3) days after such meeting has been held.

(b) If the decision is unsatisfactory to the grieving party, the grievance may be submitted to arbitration pursuant to section 19 of the Crown Employees Collective Bargaining Act.

(c) It is expressly understood that the provisions of this Article 8.05 shall not be used by the Union to institute a grievance directly affecting an employee or employees which such employee or employees could themselves initiate and the provisions of Article 8.04 hereof shall not be by-passed.

ARTICLE 9 - DISCHARGE CASES

9.01 A claim by a seniority employee that he or she has been discharged without just cause shall be treated as a grievance and shall commence at Step No. 3 of Article 8.04 provided a written grievance signed by the employee is presented to the Director of Human Resources within four (4) days after the discharge. A Representative of the Union will be permitted to attend the meeting held pursuant thereto, with the Director of Human Resources.

ARTICLE 10 - EMPLOYEE'S DISCIPLINARY RECORD

10.01 Warnings shall be taken from an employee's file if he or she has a clean record for one (1) year. Suspensions shall

be removed if the employee has a clean record for eighteen (18) months.

ARTICLE 11 - SENIORITY

11.01(a) An employee shall not attain seniority within the department in which he or she is employed until he or she has worked fifty (50) days for the Employer (hereinafter called the "probationary period"). Upon attaining seniority, the employee's seniority in that department will be computed as having commenced on a day fifty (50) working days prior to the date upon which he or she completed the probationary period and so attained seniority in that department.

(b) The lay off, termination or discharge of an employee during the employee's probationary period shall be at the sole and absolute discretion of the Employer and shall not be a dispute subject to grievance and arbitration.

11.02 Seniority shall only be department wide. Accordingly, an employee with seniority in one department shall not have seniority in any other department.

11.03 There shall be one seniority list for employees employed in the Potroom/Dishroom and a separate seniority list for employees employed in the cafeteria and departmental seniority shall not be applicable.

11.04 In all cases of promotion (except those in respect of positions excluded from the bargaining unit), and in all cases of layoff or recall, the following factors shall be considered:

(a) departmental seniority

(b) qualifications, skill, ability, merit and efficiency

Where matters in factor (b) are relatively equal in judgment of the Employer, factor (a) shall govern; provided however, that Management shall not exercise its judgment in an arbitrary manner.

11.05 A seniority employee who, due to lack of work, is displaced from his or her regular job will be assigned by the Employer to a vacancy in his or her department, provided the employee has the skill and ability to do the work involved. If there is no such vacancy, the employee will be assigned to work being performed by another employee with less seniority in his or her department providing the employee has the skill and ability to do the work involved.

Wherever used in this agreement the word "ability" shall mean presently possessed of the accomplishments which enable the person to perform the work required in accordance with the Employer's quality and service standards.

11.06 Where an employee with two (2) years or more seniority applies for and is transferred to another department, he or she shall commence accumulating and shall only accumulate seniority in the new department once he or she is so transferred and shall lose his or her seniority in the department from which he or she is transferred one (1) year from the date of the transfer. While an employee is retaining his or her former seniority in his or her former department as herein provided, he or she may only exercise such former seniority if he or she is laid off in the new department.

11.07 Loss of Seniority

An employee shall lose all seniority and service rights and his or her employment shall be deemed to have terminated if:

(a) he or she is laid off for twelve (12) months;

(b) he or she is on layoff and fails to indicate his or her willingness to return to work within forty-eight (48) hours after he or she receives or is deemed to have received notice of recall sent to him or her by the Employer in accordance with Article 11.08 or if he or she, within one hundred and twenty (120) hours after such notice of recall is so sent, fails, without a reasonable excuse, to return to work;

(c) he or she fails to return to work promptly after the expiration of any leave granted to him or her, unless he or she is excused by Management;

(d) he or she is absent from work for three (3) consecutive working days without a satisfactory reason. This provision shall not be interpreted as permitting unauthorized absences of any duration.

11.08 It shall be the duty of the employee or laid off person to notify the Employer's personnel office promptly, in writing, of any change in his or her address or telephone number. Any notice mailed to the employee or laid off person by prepaid registered mail, addressed to the address of that person as it appears on the Employer's personnel records, shall be conclusively deemed to have been received by the employee or laid off person on the third day after it was so sent unless the notice is returned to the Employer by the Post Office, in which event, it shall be conclusively deemed to have been received by the employee on the date the Post Office stamps it for return to the Employer.

11.09(a) Within sixty (60) days after the ratification of this agreement the Employer shall, wherever possible, post a departmental seniority list in the relevant department.

(b) Thereafter, the Employer shall post a revised departmental seniority list every six (6) months.

(c) An employee shall be entitled to dispute the accuracy of his or her seniority as shown on any departmental seniority list posted pursuant to this Article by filing a written notice with the Director of Human Resources and setting out therein the grounds of his or her objection within thirty (30) calendar days of the posting. If the dispute is not resolved to that employee's satisfaction, he or she may file a grievance pursuant to Article 8.

(d) If an employee does not file a dispute as herein provided or, upon filing a dispute does not process the dispute as provided in this agreement, he or she shall be deemed to have accepted as final and binding his or her seniority as shown on the departmental seniority list which has been posted.

(e) An employee shall not be entitled to dispute his or her seniority as shown on any departmental seniority list where the dispute relates to the accuracy of his or her seniority as shown on any prior departmental seniority list unless such employee has disputed the accuracy of the prior departmental seniority list as herein provided or, having disputed the accuracy thereof, is processing a dispute as provided for in this agreement.

11.10 Part Time Employee Seniority

Preference for a permanent full time vacancy in a department shall be given to the part time employee who has applied for the position in accordance with the criteria set out in Article 11.04. The successful applicant transferring from part time to full time status shall be subject to the probationary period set out in Article 11.01 and shall lose his or her seniority as a part time employee once he or she has completed the probationary period.

ARTICLE 12 - LEAVE OF ABSENCE

12.01 The Employer may, in its discretion, grant a leave of absence without pay and without loss of seniority to an employee for personal reasons. All requests for such leaves of absence shall be in writing as far in advance as practicable. The Employer agrees to reply to such requests in writing within seven (7) working days, whenever possible. If an employee uses a leave of absence for a purpose other than that for which it was granted, his or her employment shall be terminated.

12.02 Any employee elected or appointed to a full time executive position within the Union will be granted a leave of absence without pay and benefits as herein provided for a period of one (1) year.

ARTICLE 13 - SAFETY AND HEALTH

13.01 The Employer and the Union agree that they will mutually cooperate and maintain reasonable standards of safety and health in order to prevent injury and illness.

13.02 An employee who is required by law to submit to a medical examination shall not be compensated for any loss of income by the Employer. An employee who is required by the Employer and not by any law to submit to a medical examination during working hours shall be paid at his or her straight-time hourly rate for a reasonable amount of time spent in attending to such an examination. If any employee upon being so examined is found not to fulfil the medical requirements for his or her position, his or her employment shall be terminated. Such termination shall be deemed to be for just cause and shall not be the proper subject

matter of a grievance within the meaning of this agreement and shall not be arbitrable.

ARTICLE 14 - MERIT RATING

14.01 The scales of wages as outlined in Schedule "B" in this agreement are considered minimum scales and do not prohibit the Employer from granting merit increases to more proficient employees.

ARTICLE 15 - EVENT SERVICES DEPARTMENT

15.01 Scheduling in the Event Services Department is based on the availability of work. Depending upon the work available, management will use its best efforts to allocate weekend work amongst the full-time employees in the Event Services Department so that the opportunity to have weekends off is shared equally amongst them provided the Employer is able to maintain an adequate and qualified work force.

15.02 The Employer agrees that at least one member of the Health and Safety Committee shall be employed and represent the employees in the Event Services Department.

15.03 The Employer will supply to each seniority employee in the Event Services Department four sets of uniforms per year. If an employee who has been supplied with the uniforms as herein provided for leaves the employment of the Employer prior to completing nine months of service, he or she shall reimburse the Employer out of any monies owing to him or her the cost of such uniforms or he or she shall return the uniforms. To that end, a new hire will be required to sign an authorization for this deduction. Further, the Employer will replace any uniform so

supplied from time to time when the Employer determines it is necessary to do so because of wear and tear to the uniform.

ARTICLE 16 - HOUSEKEEPING

16.01 Subject to the Employer maintaining a qualified and adequate work force to perform the work required to be done, weekend work in the Housekeeping Department will be rotated.

ARTICLE 17 - BULLETIN BOARDS

17.01 The Employer will provide bulletin boards to be located at strategic locations. All Union notices must be signed by proper officials of the Union and submitted to the personnel department of the Employer before being posted. The Union agrees that it will not distribute pamphlets and other publications on the Employer's premises without the Employer's prior written approval.

ARTICLE 18 - SAFETY SHOES

18.01 It shall be a condition of hire and continued employment that each full time employee employed in the Event Services, Maintenance, Cleaning Services and Stewarding Departments wear safety shoes of the style, colour and quality approved by the Employer. The Employer shall supply to each of the aforementioned employees one pair of such safety shoes per year at a cost to be determined by the Employer. Prior to obtaining such shoes, the eligible employee must obtain a purchase authorization form from the Employer. Where an eligible employee who has been supplied with safety shoes as herein provided leaves the employment of the Employer prior to completing six months of employment, he or she shall reimburse the Employer out of any monies owing to him or her

the cost of such shoes. To that end, a new hire will be required to sign an authorization for this deduction.

ARTICLE 19 - BONDING

19.01 Where required by the Employer, each employee must be and remain acceptable for bonding purposes as a condition of continued employment and where an employee fails to be and remain acceptable to the Employer's bonding company, his employment, regardless of seniority or other conditions, shall be terminated.

ARTICLE 20

20.01 All new jobs in the bargaining unit or permanent vacancies in existing jobs in the bargaining unit will be posted for three (3) working days. Any employee with at least two (2) years seniority who wishes to be considered may make application. When an employee successfully makes such an application, he or she cannot apply for any other posting of a new job or permanent vacancy for a period of one (1) year thereafter. An employee awarded such an opening shall be required to serve a probationary period of three (3) months.

ARTICLE 21 - CASH HANDLING

21.01 If an employee who handles cash fails to report either a cash shortage or overage, he or she shall be terminated. An employee with a cash float who uses the whole or any part of the cash for his or her purposes, shall be terminated. Any employee who has been terminated pursuant to this provision is entitled to file a grievance and have it arbitrated.

ARTICLE 22 - MATERIAL HANDLING

22.01 For the purposes of this agreement, material handling means the work associated with handling all freight inside the Convention Centre including unloading all trucks or vehicles, delivering materials to an exhibitor's booth, and storage of crates, removing and reloading material at the conclusion of a show, but does not include small items which can be carried by one person in one trip without the aid of flat trucks, dollys or other similar equipment and does not include the handling of specialty items such as antiques, heavy machinery, valuables and electronic equipment.

22.02 Whenever possible, material handling work will be performed by the employees of the Employer on and after October 1, 1989.

22.03 With respect to assigning persons to perform material handling work, the Employer and the Union have agreed to the following:

(a) The eight most senior full time employees employed in the event services department who have the skill and ability to perform the work involved shall be designated as material handlers.

(b) Wherever there is material handling work to be performed by the employees of the Employer, the Employer shall assign such work from amongst the eight employees selected pursuant to paragraph (a) on the basis of their skill and ability to do the work involved.

(c) Whenever the Employer requires more persons to perform material handling work than the eight described in paragraph (a), it shall be entitled to use casual employees to perform such work.

(d) The employees who were selected in accordance with paragraph (a) herein shall only be paid the material

handling rate while they are performing material handling work. Otherwise, they will be paid the normal rate of the Event Services Department.

(e) Any casual employee assigned and performing material handling work shall receive a rate of pay not to exceed the rate of the other full time employees in the Event Services Department.

(f) As the volume of business of the Convention Centre increases including in particular the volume of material handling, it is recognized that the manpower requirements in the Event Services Department may increase as well. In the event of such increases over time, the complement of those to be designated as material handlers in accordance with 22.03(a) may increase such that from time to time approximately 50% of the employees employed in the Event Services Department are so designated.

ARTICLE 23 - SCHEDULES

23.01 Annexed to this agreement are the following schedules which are hereby declared to form part hereof:

(a) Schedule "A" - Hours of Work and Overtime

(b) Schedule "B" - Occupational Classifications and Wage Rates

(c) Schedule "C" - Vacation Benefits

(d) Schedule "D" - Statutory Holidays

(e) Schedule "E" - Benefits

(f) Schedule "F" - Banquets

ARTICLE 24 - GENERAL

24.01 The Employer will make full length lockers available to full time employees within six months from the date of ratification.

24.02 The Employer will offer a reasonable number of employees the opportunity to participate in a first aid course.

24.03 An employee will be provided with cab fare home by the Employer if the employee's shift ends on or after 12:45 a.m.

24.04 Prepaid parking shall be used as often as possible in the parking garage for the general public for major events at the Convention Centre and Skydome.

ARTICLE 25 - DURATION

25.01 This agreement shall become effective on the day of April, 1990 and shall remain in full force and effect and shall not be re-openable, save and except as otherwise herein expressly provided, until the 31st day of December 1992 and shall continue automatically thereafter during annual periods of one (1) year each, unless either party notifies the other party in writing of its desire to negotiate amendments to this agreement.

25.02 Notice that amendments are required shall only be given during the period of not more than three (3) months and not less than one (1) month prior to the 31st day of December, 1992, or similar period thereafter. If notice of desire to amend this agreement is given by either party in accordance with the foregoing, the other party agrees to meet for the purposes of negotiations.

DATED at Toronto this day of April, 1990.

FOR THE EMPLOYER	FOR THE UNION
_____	_____
_____	_____
_____	_____

SCHEDULE "A"

HOURS OF WORK AND OVERTIME

A.01 It is hereby expressly understood and agreed that the provisions of this Schedule are for the purposes of computing overtime and shall not be construed to be a guarantee of or limitation upon the hours of work to be done per day or per week or otherwise, nor as a guarantee of working schedules.

A.02 The normal work week for all full time employees shall on average consist of forty (40) hours worked, exclusive of lunch periods, comprised of eight (8) hours of work per day in five (5) days per week.

A.03 The Employer will maintain its present practice of scheduling Maintenance Department employees to four 10 hour shifts per week with overtime at the rate of time and one half for hours worked beyond 10 hours in a day or 40 hours in a week, whichever is applicable.

A.04 In the Maintenance Department, overtime at the rate of time and one half will be paid for all hours worked on the 5th and 6th consecutive day of work in the same work week and double time will be paid for work on the 7th consecutive day in the same work week where the employees in that department are employed on the four day ten hour schedule.

A.05 It is recognized that the Employer will from time to time require employees to perform overtime work. An employee who wishes to be excused from an overtime assignment shall, in support of his request, furnish the Employer with an acceptable bona fide reason. The Employer's decision upon the request will not be made in an arbitrary manner.

A.06 Except for the Maintenance Department employees employed on the four day ten hour schedule, overtime at the rate of one and one half (1 1/2) times the employee's straight time hourly rate of pay exclusive of premiums shall be paid for hours worked in excess of eight (8) hours of work per day.

A.07 There shall be a one half (1/2) hour unpaid lunch break in each working day at a time or times to be designated by the Employer.

A.08 In no case shall there be a duplication or pyramiding of overtime or any other premium compensation.

A.09 Minimum Reporting Allowance

(a) An employee, who properly reports for work as scheduled, shall be entitled to work his or her shift up to the maximum of eight hours or be paid equivalent pay at his or her straight time hourly rate unless the Employer has notified the employee in advance not to report for work.

(b) This minimum reporting allowance does not apply to the employee who reports for work but there is no work for him or her to do because of circumstances beyond the control of the Employer.

(c) When an employee has not been working because of illness, leave of absence or any other causes, it shall be his or her responsibility to arrange with the Employer for his or her return to work prior to his or her intended date of return, and if the employee fails to do so, he or she shall not be entitled to a reporting allowance as herein provided.

(d) It is the employee's duty to keep the Employer informed of his correct address and telephone number, and the Employer will not be liable for any payment hereunder unless arrangements have been so made.

(e) For the purposes of clarification, no employee shall receive a reporting allowance which exceeds the hours he or she has not worked on the shift for which he or she reported for work. For example, an employee who is scheduled to work a five hour shift and reports for work will receive a minimum reporting allowance of five hours or equivalent pay. If an employee is scheduled to work an eight hour shift, he or she shall receive the maximum reporting allowance of eight hours or equivalent pay.

A.10 Call-Back Allowance

An employee who has left the facility after the completion of his or her regular shift and is called back to work shall receive a minimum of four (4) hours' pay at his or her straight time hourly rate. It is understood that this provision shall not apply in the case of an employee who is required to work within a period prior to the commencement of his regular shift, but he or she shall be appropriately compensated.

A.11 The Employer will, wherever possible, post shift schedules at least seventy-two (72) hours in advance.

A.12 Employees will be entitled to one (1) ten minute (10) rest period for each completed one half shift of four (4) hours' duration.

A.13 In lieu of the breaks provided for in A.12 and in recognition of the fact that the parking booth attendant is required to cash out, an employee in the Parking Department shall be entitled to cease performing his duties as a parking booth attendant 30 minutes prior to the end of his scheduled shift to enable him to cash out and leave early in recognition of the fact that he has not received a break as otherwise provided for.

A.14 Wherever possible, shift schedules will be arranged to give employees sixteen (16) hours between shifts.

A.15 Overtime shall first be offered to full time seniority employees who are at work before overtime is offered to casual employees.

SCHEDULE "B"

JOB CLASSIFICATION	CURRENT MTCC RATE $/hr	Jan.1 1990	Sept.1 1990	YEAR 2 Jan.1 1991	YEAR 2 Aug.1 1991	YEAR 3 Jan.1 1992	YEAR 3 Aug.1 1992
BANQUETS							
Waitperson	5.49	5.86	6.04	6.22	6.40	6.60	6.72
BEVERAGE							
Bartender	8.36	8.78	9.04	9.40	9.69	10.07	10.27
Porter	7.37	7.74	7.97	8.29	8.54	8.88	9.06
KITCHEN							
Chef de Partie	12.67	13.70	14.39	14.96	15.56	16.18	16.83
First Cook	9.82	10.61	11.14	11.59	12.05	12.53	13.03
Second Cook	8.60	9.30	9.77	10.16	10.56	10.98	11.42
Apprentice	7.76	8.38	8.80	9.15	9.52	9.90	10.29
Saucier	11.11	12.01	12.61	13.11	13.64	14.19	14.75
STEWARDING							
Steward	8.05	8.61	9.04	9.40	9.78	10.17	10.58
Pot Washer	8.05	8.97	9.42	9.80	10.19	10.59	11.02
STAFF CAFETERIA							
Attendant	8.05	8.61	9.04	9.40	9.78	10.17	10.58
HOUSEKEEPING							
Day Cleaner	8.10	8.92	9.37	9.74	10.13	10.54	10.96
Night Cleaner	8.87	9.73	10.22	10.63	11.05	11.49	11.95
Machine Operator	9.72	10.42	10.94	11.38	11.83	12.31	12.80
Window Cleaner	9.43	10.32	10.84	11.27	11.72	12.19	12.68
Window Leadhand	10.01	10.51	11.04	11.48	11.94	12.41	12.91
Heavy Cleaner	8.10	9.45	9.92	10.32	10.73	11.16	11.61

JOB CLASSIFICATION	MTCC CURRENT RATE $/hr	Jan.1 1990	Sept.1 1990	YEAR 2 Jan.1 1991	YEAR 2 Aug.1 1991	YEAR 3 Jan.1 1992	YEAR 3 Aug.1 1992
MAINTENANCE							
General	11.72	12.30	12.92	13.43	13.97	14.53	15.11
Engineering	13.97	14.68	15.41	16.03	16.67	17.34	18.03
Tradesperson	13.97	15.97	16.77	17.44	18.14	18.86	19.62
Painter I	13.97	15.97	16.77	17.44	18.14	18.86	19.62
Painter II	13.97	14.68	15.41	16.03	16.67		
PARKING							
Attendant	8.50	8.92	9.37	9.74	10.13	10.54	10.96
Night Attendant	9.07	9.53	10.01	10.41	10.82	11.26	11.71
CONCESSIONS							
Attendant	7.29	8.21	8.62	8.97	9.32	9.70	10.08
Cashiers	7.43	8.50	8.93	9.28	9.65	10.04	10.44
FRONT & CENTRE							
Counterperson	8.62	9.43	9.90	10.30	10.71	11.14	11.58
Bus Person	7.37	7.73	8.12	8.44	8.78	9.13	9.50
Bartender	9.05	10.02	10.52	10.94	11.38	11.83	12.31
EVENT SERVICES							
Houseperson	9.72	10.20	10.71	11.14	11.58	12.05	12.53
Material Handling	9.72	17.00	17.85	18.56	19.31	20.08	20.88

NOTES

1. Probationary Rate - $1.00 per hour less than the rate for the classification.

2. An employee who works one (1) hour or more in a higher rated job classification shall be paid the higher rate for all hours so worked.

NOTES - cont'd.

3. Employees who are employed as window cleaners who are required to work at a height exceeding three (3) metres will be paid a premium of $2.00 per hour.

SCHEDULE "C"

VACATIONS

C.01 For full time seniority employees who have completed one (1) year of service or more, three (3) weeks vacation with six percent (6%) of gross pay.

C.02 For full time employees who have completed twelve (12) years of service or more, four (4) weeks vacation with eight percent (8%) of gross pay.

C.03 For full time employees who have completed twenty (20) years of service or more, five (5) weeks vacation with ten percent (10%) of gross pay.

C.04 For the purposes of this agreement the term gross pay does not include any amount paid to an employee as gratuities or service charges.

C.05 For the purposes of determining the vacation to which an eligible employee is entitled, the anniversary date of his or her employment shall apply.

C.06 Vacations shall be granted within ten (10) months following the eligible employee's anniversary date of employment.

C.07 On January 30th of each year, there shall be a blank vacation schedule posted in each department which shall remain posted until the following March 15th. An employee desiring to take his or her vacation entitlement during a particular period of time shall write in his or her name on the schedule in the space provided for that period of time. On March 16th the schedule shall be taken down and the vacation request as shown on the schedule shall be allotted in accordance with departmental seniority and the employee's request subject to the Employer being able to maintain

a qualified and adequate staff in the department concerned. If it is not possible to grant an employee his or her requested vacation period as shown on the schedule, the employee will be given a reasonable period of time but not to extend beyond April 30th to request another vacation period to which he or she would be entitled because of his departmental seniority subject to the Employer being able to maintain a qualified and adequate staff in the department. The final vacation schedule prepared in accordance with the foregoing shall be posted on May 15th.

C.08 Vacation credits shall not be accumulated from one year to the next.

SCHEDULE "D"

STATUTORY HOLIDAYS

D.01 A full time seniority employee will be compensated for time lost as a result of one of the following statutory holidays being observed on his or her regularly scheduled work day. Compensation shall be a sum equivalent to his or her straight time hourly rate for the number of straight time hours of work in his or her normal day, provided he or she complies with the qualifications hereinafter set forth. The statutory holidays are:

1. New Year's Day
2. Good Friday
3. Victoria Day
4. Canada Day
5. Civic Holiday (1st Monday in August)
6. Labour Day
7. Thanksgiving Day
8. Remembrance Day
9. Christmas Day
10. Boxing Day
11. Easter Monday
12. Employee's anniversary date of employment

D.02 Where an employee works on a statutory holiday, he or she shall be paid at one and one half (1 1/2) his or her regular rate of each hour he or she works and he or she shall also be paid his or her statutory holiday pay without having to take a lieu day.

D.03 In order to qualify for payment on a statutory holiday as provided for in D.01, the eligible employee must work his or her scheduled shift immediately prior to and his or her scheduled shift immediately following the holiday.

D.04 An otherwise eligible employee who is scheduled to work on one of the designated holidays but does not report for work and work as scheduled shall forfeit his or her holiday pay for that particular day.

D.05 In the event that one or more of the aforementioned statutory holidays occurs during the eligible employee's vacation, he or she shall be paid for the statutory holiday in addition to his or her vacation pay.

D.06 For the purposes of this Schedule, "active" when applied to an employee means an employee who is not absent from work for any reason during the period immediately prior to or immediately following the statutory holiday other than an employee who is on vacation or on a scheduled day off.

SCHEDULE "E"

BEREAVEMENT LEAVE, HEALTH & WELFARE AND PENSION

E.01 Bereavement Leave

When either the current spouse, parent, child, brother, sister, mother-in-law or father-in-law of a full time seniority employee dies, that employee on request will be excused for a period not to exceed three (3) consecutive days (or such fewer days as the employee may be absent). In addition, an eligible employee shall be entitled to one (1) day off to attend the funeral of that employee's grandparent, ward or guardian. In any event, the eligible employee shall not be entitled to receive any pay hereunder for any day upon which he would not otherwise have been scheduled to work for the Employer. Payment will be based on the employee's straight time hourly rate exclusive of premiums.

E.02 Health & Welfare

During the term of the collective agreement, the Employer agrees to maintain the existing level of benefits and pay its existing portion of the premiums to provide the seniority employees who work full time with the benefits as described in the existing Group Insurance policy. All entitlement to such benefits shall be based on the terms and conditions of the underlying insurance policy. The Employer will update the O.D.A. schedule each year.

E.03 Pension

On and after ratification, the Employer will pay ten cents (10¢) per hour of work by each full time seniority employee to an Union Trusteed Union Administered Pension Plan. The maximum contribution per month for a full time seniority employee shall be $16.00. On and after December 1, 1992, the Employer will pay 20 cents (20¢) per hour of work not to exceed $32.00 per month.

E.04 Sick Leave

At the beginning of each calendar year each full time seniority employee shall be credited with six (6) sick leave days which sick leave credits may be used by a full time seniority employee to compensate him or her for his or her loss of earnings on account of an illness which prevents the employee from working on the employee's scheduled day of work.

Each day of sick leave credit shall be in an amount which represents the employee's normal daily schedule of work multiplied by the employee's regular hourly wage rate at the time of such illness.

If a full time seniority employee does not use all of his or her sick leave credits in a calendar year, the employee shall be paid an amount immediately after the end of the calendar year which represents the value of those unused sick leave credits less the usual deductions required by law.

When a full time employee is not a seniority employee at the beginning of the calendar year, he or she will be credited with a pro rata amount of the sick leave credits for the point in time in the calendar year when he or she attains seniority.

SCHEDULE "F"

BANQUET DEPARTMENT

F.01 (a) Except as otherwise provided herein, full time banquet employees shall be subject to all the terms and conditions of the collective agreement between the Employer and the Union with the exception that Article 11.03 to and including 11.05 shall only apply to the extent as their seniority applies to the Banquet Department.

(b) A part time employee shall only be entitled to the terms and conditions of this Schedule, to the grievance procedures set out at Articles 8 and 9 and to the benefits of Article 11.10.

(c) Casual banquet employee is a person who works as needed on a call in basis by function and is employed under an arrangement whereby he or she may elect to work or not for a temporary period when requested so to do. He or she shall be deemed to have been hired for each function worked and terminated at the end thereof.

F.02 Hours of Work and Overtime

The hours of work and overtime provisions for full time, part time and casual banquet employees shall be determined in accordance with the terms and conditions of the Employment Standards Act of Ontario and not by Schedule "A".

F.03 Service Charge

Subject to paragraph F.10 below, it is agreed that of the total amount of the service charge left by the guest seventy-five percent (75%) of the service charge on food will be shared among the waiters and waitresses.

Of the service charge on beverages seventy-five percent (75%) will be shared among the bartenders who worked the function.

Payment of Service Charges

The Employer will continue its present practice for the payment of service charges.

It is further agreed that the checks showing the total amount of service charge signed by the guests will be made available to the Union for inspection upon request.

F.04 Meals

Full time, part time and casual banquet employees shall be allowed one (1) meal for each four (4) hours worked.

Guarantee

Full time, part time and casual banquet employees called in or scheduled to work a function shall be guaranteed three (3) hours work.

F.05 Vacation Pay

Vacation pay for part time and casual banquet employees shall be in accordance with the provisions of the Employment Standards Act of Ontario rather than those as set out in Schedule "C" of the collective agreement.

F.06 Terms and conditions of the Management Rights' Clause at Article 3 applies to all banquet employees.

F.07 Union dues shall be deducted from part time banquet employees in accordance with Article 5.

F.08 For management sponsored functions, banquet waiters, waitresses and bartenders shall be paid a service charge based on the retail value of the function served.

F.09 The Employer shall supply to each full time waiter and waitress in the banquet department a uniform in accordance with its normal practice used in supplying uniforms to staff.

F.10 The gratuity paid to any steady full time waiter or waitress in the banquet department shall not be affected by the use of scrub captains.

F.11 Clean-up For Dinner/Dance

(a) Waiters/waitresses will set up functions assigned to them for service of food and after the function is over they will clean up the assigned function and leave the tablecloths on the tables.

(b) Where a waiter or waitress is required to perform clean up work when there is no food service or required to set up or clean another function and are not scheduled to serve the function, they will receive a rate of pay equal to that of the beverage porter for those hours worked.

(c) Bartenders will clean up glasses after dinner is served. If extra help is required for clean up, the Maitre d' will request, before the start of the function, the number of waiters/waitresses needed to stay for cleaning up of the function. If the Maitre d' does not have a response to his request, he will appoint the number needed from part time waiter/waitresses who worked at the function. Full time waiters/waitress will have a first refusal by seniority strictly on a voluntary basis.

Notwithstanding the above paragraph F.11(c), should no part time waiters/waitresses be scheduled, the Catering Manager will have the right to schedule from the group of employees serving the function, and to select in an inverse order of seniority the required number of people for any clean up work.

The Employer will, whenever possible, post shift schedules at least 72 hours in advance.

The Employer will supply to full time seniority banquet bartenders a reasonable number of shirts, pants or dresses in a quantity, quality and style determined by the Employer.

A casual employee in the banquet department shall not be scheduled to work a function when a full time employee is available to work the function and the hours of work of the function would not be overtime work for the full time employee.

[TO BE TYPED ON MTCCC LETTERHEAD]

[Date]

Textile Processors, Service Trades,
Health Care, Professional and
Technical Employees International
Union, Local 351A
[address]

Dear Sirs:

Re: Letter of Understanding

In the course of negotiations a number of proposals were made by the employees in the Banquet Department with respect to the level of staffing for various functions and events. As the Employer explained in the negotiations, staffing for banquet functions and events is based on providing the best possible service to the customer in accordance with its requests and requirements.

In accordance with that commitment, the Employer explained that it applies the following simple rules of thumb with respect to staffing for banquet functions or events:

1. Wait help are assigned 32 anticipated covers per pair of employees.

2. Wait help are assigned to receptions on the basis of one wait help person per 75 anticipated guests and to buffet functions on the basis of one wait help person per 40 anticipated guests.

3. Bartenders are assigned to host bars on the basis of one bartender per 100 anticipated guests and to cash bars on the basis of one bartender per 150 anticipated customers.

As the Employer explained, any of the foregoing numbers may decrease or increase based on the number of items on the menu and the level of service requested by the client. Furthermore, in scheduling employees, an allowance must be made for unscheduled absenteeism. Finally, the number of covers per pair of wait help may change because of the number of persons attending the function may be less than that planned and contracted for with the client.

We trust that the foregoing adequately explains the Employer's practices in this matter.

Yours very truly,

The undersigned hereby agrees that the foregoing accurately sets forth the understandings herein described which were reached during negotiations.

TEXTILE PROCESSORS, SERVICE TRADES,
HEALTH CARE, PROFESSIONAL AND TECHNICAL
EMPLOYEES INTERNATIONAL UNION, LOCAL 351A
Per:

_____

Ontario Public Service
Labour
Relations
Tribunal

Fonction publique de l'Ontario
Tribunal administratif
des relations
de travail

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8
180, rue Dundas ouest, Bureau 2100, Toronto (Ontario) M5G 1Z8

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Facsimile/Télécopie : 416/326-1396

T/0019/90

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Air Engineers)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Natural Resources)

Respondent

BEFORE:	G. Charney	Vice-Chairperson
	L. Robbins	Member
	F. Collict	Member
FOR THE APPLICANT:	J. Knight Counsel Fraser & Beatty Barristers & Solicitors	
FOR THE RESPONDENT:	J. Miko Job Evaluation Officer Ontario Public Service Employees Union	
HEARING:	April 29, 1991 June 5, 1991 November 15, 1991	

AWARD

This Board of Arbitration was established to resolve a dispute over wages for the new class series of Air Engineer 1-3 in accordance with Article 5.8.1 of the collective agreement. Article 5.8.1 provides as follows:

> When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

Both parties agreed that the Board was properly constituted pursuant to Sections 10 and 11 of the Crown Employees Collective Bargaining Act and that it has the jurisdiction to establish salary rates based upon the revision of the Air Engineers classification standards.

In January of 1990 the weekly and annual pay rates for Air Engineers were as follows:

	MINIMUM	MAXIMUM
Air Engineer	$17.76 $37,069	$18.19 $37,965
Senior Engineers	$743.63 $38,802	$764.78 $39,905

Employees in the Air Engineer class series work out of the main Aviation and Fire Centre at Sault Ste. Marie and/or out of other bases located within five regions across the Province. These

regions are known as the following: Northwestern, North Central, Northern, North Eastern and Algonquin. Malton is considered as a separate location but not as a region. Air Engineers work out of more than 30 primary and secondary air bases throughout the regions. Primary bases are permanent facilities which are year-round operations, whereas, secondary bases are seasonal operations and manned when required.

In the course of their duties, Air Engineers maintain, repair and service the Ministry air fleet which ranges from small fixed-wing utility aircraft to helicopters and large specialized water-bombers. All aircraft types are highly utilized by the ministry and provide three major types of air service: fire flying (water bombing, transport), specialty service (aerial survey, photography, etc.) and transportation of passengers and materials (off-airport and I.F.R.).

The new class standards were initiated by the employer rather than through a grievance. The initial employer proposal was to change the two classes of Air Engineers i.e. the Air Engineer and the Senior Engineers into three classes, namely, Air Engineer 1, Air Engineer 2, and Air Engineer 3.

The employer takes the position that Air Engineer 1 is comparable to its class of Air Engineer and that Air Engineers in both standards, that is Air Engineer and Air Engineer 1 perform mechanical testing to determine and certify air worthiness on a limited number of aircraft as determined by the group of aircraft contained in the "M" license.

The employer compares the senior Air Engineer with Air Engineer 3 and in its view those are the same jobs except for the fact that Air Engineers 3 do not necessarily supervise and that the Air Engineer 3 can perform maintenance services on a broad range of aircrafts and/or act as a group leader for engineers at the first two levels. This means that an Air Engineer 3 who only performs maintenance services, will do so under the direction of management, and not under the direction of a fellow employee of the same level.

Air Engineer 2 is a new level added to the class which is described as an intermediate working level position which provides increased compensation for employees who have acquired one other level of authority in addition to the basic licensing requirement. This means that Air Engineer 2's (all formally air engineers) are qualified and required to work on at least one group of aircraft, with an additional area of authority to work on another group of aircraft, or an endorsement or certificate which qualifies the employee to work in a specialized area. The Air Engineer 2, according to the employer, works under the direction and guidance of the Air Engineer 3.

At the third day of hearing and after discussions between OPSEU and the Government, the Government revised its offer and created four classes of Air Engineer. Air Engineer 4 was to be a Group Leader level, and the four existing Senior Engineers would move to that level. The union agreed that there should be four classifications of Air Engineer and the issue became simply what would the wage rate be. Based on the Government's offer, the new

classifications effective January 25, 1990, would have the following wage rates:

Air Engineer 1 - $18.19 per hour
Air Engineer 2 - $19.20 per hour
Air Engineer 3 - $20.25 per hour
Air Engineer 4 - $854.55 per week

The union asked that these salaries be increased by 23.15%. The union based this on a series of comparators set out in its brief.

The employer's offer would result in substantial increases for Air Engineer 2, Air Engineer 3, and Air Engineer 4, which make up the vast majority of the employees. The old class series would have provided Air Engineers with a wage rate of $18.19 per hour and senior Air Engineers with a wage rate $764.78 per week.

No doubt over the years there has been technological change. In my view, some of that has been reflected in the new classifications for Air Engineer 2 and Air Engineer 3, which would compensate for increased training, qualifications, and responsibility.

After considering all of these factors the Board awards as follows.

1) that there be a new class series consisting of Air Engineer 1, 2, 3 and 4; and

2) wage rates effective January 25, 1990 be as follows:

Air Engineer 1 - $18.74/hour
Air Engineer 2 - $19.77/hour
Air Engineer 3 - $20.86/hour
Air Engineer 4 - $880.00/week

The class series established is in accordance with the employer's propcsal and entry into the various classes is in accordance with the employer's proposal all of which have been agreed to by the union.

This Board shall remain seized if there is any difficulty in implementing this Award, including matters relating to the drafting of the new Air Engineer 4 class.

DATED at Toronto this 2nd day of March, 1992.

Gerald J. Charney, Chairperson

I dissent

"Larry Robbins"
Larry Robbins, Union Nominee

I concur

"F.T. Collict"
F.T. Collict, Employer Nominee

ADDENDUM TO WAGE DISPUTE AWARD
AIR ENGINEERS

In the view of this Member, the wage proposal advanced by the Employer as set out at the top of page 5 of the award was a reasonable basis for settlement by the parties of the matters in dispute.

This proposal of 4 levels of Engineers, as set out on pages 4 and 5, recognized the various levels of certification required by Air Engineers to perform their varying levels of responsibilities; and was in reasonable relationship to the comparative compensation data available to the panel Members.

Notwithstanding the above, this Member is in agreement with the details set out in the award at the bottom of page 5 with reference to the new class series for Air Engineers and the assigned wage rates.

F.T. Collict

F.T. Collict

March 12, 1992

Date

IN THE MATTER OF AN ARBITRATION

BETWEEN: CROWN IN RIGHT OF ONTARIO (MINISTRY OF NATURAL RESOURCES)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF A WAGE DISPUTE RE AIR ENGINEERS

D I S S E N T

I have reviewed the Award of the Chairperson. In my view, the rates awarded fall short of what is required in light of the increase in complexity of the job and the comparisons presented.

There is no question that the level of skill has increased significantly over the years, particularly with the change in the nature of the fleet, the use of more specialized heavy water bombers and more rotary wing aircraft. Moreover, the new standards make specific reference to the complexity of the maintenance problems to be resolved.

When we consider the comparisons, and in particular, the Employer's own data, it is clear that the awarded rates represent an insufficient increase. The Employer provided certain private sector comparisons including Ontario Hydro and Air Canada. Although the majority were non-unionized, the mean for Air Engineer 2 for 1990 was $21.14 per hour. This is the most important level for comparison purposes, as that is where the majority of the bargaining unit fall. It effectively would be the benchmark level.

In comparison, the awarded rate of $19.77 per hour falls some 6.9% behind the above average. Even the awarded hourly rate for the A.E. 3 falls behind the mean of the Employer's data for A.E. 2.

I would have awarded an additional adjustment to substantially close that gap.

Dated at Toronto, Ontario this 5th day of March, 1992

Larry Robbins
Union Nominee

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T/0030/90

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Roofing Specialists)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Housing)

Respondent

BEFORE:	D. Stanley	Vice-Chairperson
	L. Robbins	Member
	J. R. Scott	Member

FOR THE APPLICANT: L. Robinson
Research Officer
Ontario Public Service Employees Union

FOR THE RESPONDENT: E. Johnson
Staff Relations Officer
Human Resources Secretariat
Management Board of Cabinet

This matter is referred to us pursuant to Article 5.8.1 of the Collective Agreement between OPSEU and the Crown in the Right of Ontario, as follows:

> 5.8.1 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

There is only one person who will be affected by this Award, Peter Kuntz, the sole employee classified as a "Roofing Specialist", Kuntz was formerly classified as a "Services Supervisor 2, Atypical". Kuntz began the process of appealing his classification in 1987, although a grievance was not filed until February 1989. That grievance was heard in June 1989 with the result that the Employer was ordered to, "properly classify the grievor by creating a classification which adequately reflects his current unique duties and responsibilities". Both the old and new classification fall into the Maintenance Services Category, which encompasses 136 classes and 4,800 employees.

The Union is proposing a substantial increase from the salary level of Kuntz's old classification. In arriving at a conclusion as to the proper salary level for the classification they would have us consider the following comments from the Arbitration Board which found him to be improperly classified:

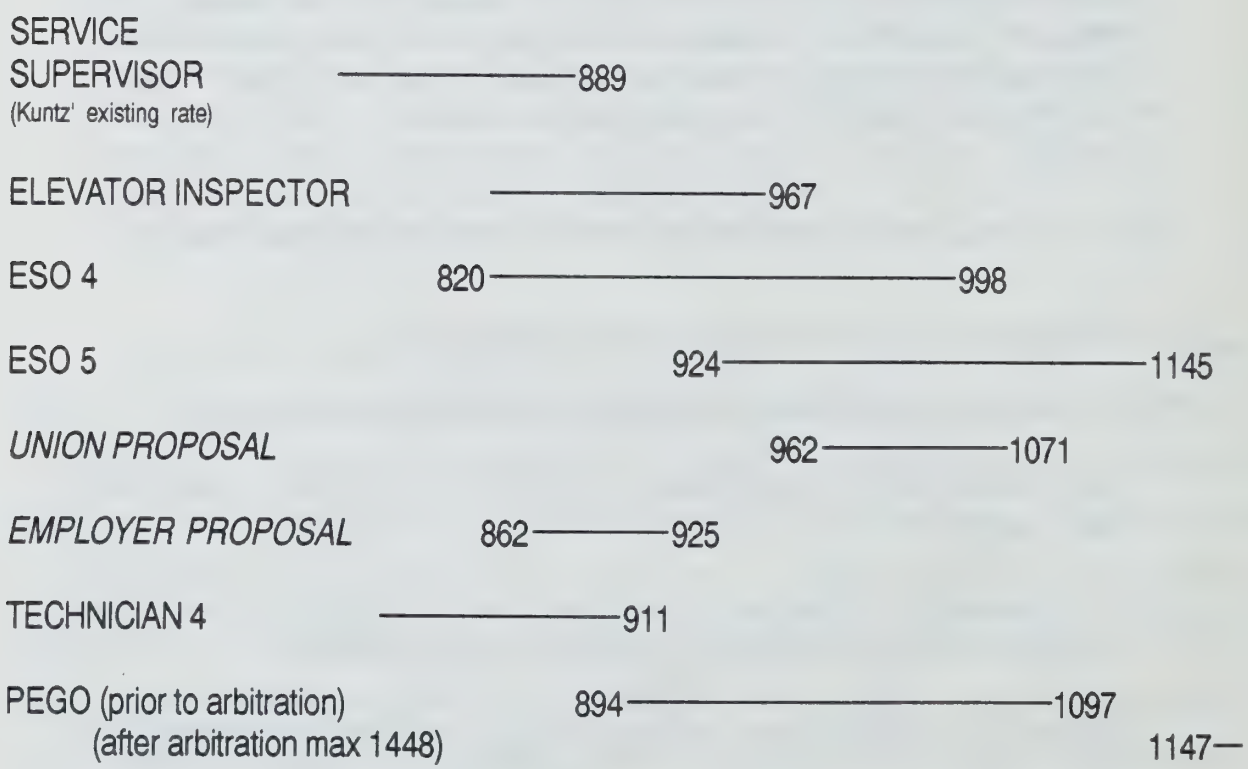
> The parties agreed that Mr. Kuntz is the Ministry expert on roofing matters. In fact, the employer candidly acknowledged that the grievor's position is unique in that it was unaware of any similar job within the Ontario Public Service.
>
> On the evidence adduced, the grievor's actual duties and responsibilities greatly exceed those contemplated in the Services Supervisor 2 class standard. Clearly, Mr. Kuntz has no direct involvement in either the mechanical or electrical disciplines. He performs as the roof systems expert for the Ministry — a position that appears to be unique within the Ontario Public Service. His territorial jurisdiction is Provincial in scope and his expertise is far broader and effects a different constituency than contemplated by the current class standard. In addition, a substantial component of the grievor's job is associated with research and development duties — a fact which is simply not reflected in the present classification.

The bargaining agent submitted that the factors we should consider are:

1. A comparison of the old and new Class Standards
2. The needs of the Crown and its agencies for qualified employees
3. The conditions of employment in similar occupations outside the public service
4. The desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees.
5. The need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

The Board has directed it mind to all of these factors and to those stressed by the Employer. The Employer presented us with a survey of outside firms claiming to have positions similar to the Roofing Specialist. Not having detailed job descriptions it is difficult to determine the real comparability of those positions. In any event we conclude that the most important factor is that the wage level we set is in harmony with other classifications in the Public Service. There is ample evidence in the form of internal comparisons to arrive at an appropriate salary level for this classification.

What follows is a graphic representation of the salary maximums and minimums of the classifications used by the parties for comparison purposes and the Union's and Employer's positions: (all figures represent 1989 salary)



The Union relied heavily in their submission on a comparison of Kuntz's job description and that of Engineering Service Officers (ESO) 4 and 5. They also relied on the relationship to the classification of the person to whom he reports, Coordinating Engineer Buildings, at the PEN 19 level. The Union's proposal is to set the start rate for the class we are dealing with at the mid point between the third steps of the ESO 4 and 5 and the top rate mid way between the two maximums. This results in a 20.5% increase over the maximum rate for the Service Supervisor class.

Employer Counsel argued that the ESO 4 job class involves engineering work and entails supervision of all aspects of construction, that there is greater accountability, and a far greater scope to the job. The internal comparators used by the Employer were jobs in the Technician 4 Engineering Survey (atypical), and Technician 4 Construction (atypical) classifications. The Employer's proposal is to increase the top rate of the new classification 4% above the old.

The Union argued that, although the Employer submitted we ought to use comparators in the same category, the jobs they used are not in the Maintenance category and are technician as opposed to technologist jobs. He argues that Kuntz is a technologist, a para-professional, as distinct from a technician.

We have reviwed the Position Specifications for various ESO 4 class jobs; Maintenance Operations Review Officer, Safety Policy Officer, Senior Traffic Control Devices Policy Officer, and CADD Coordinator. In our view these describe jobs very much like that of the Roofing Specialist. The Employer put forward comparisons to the Safety and Security Systems Consultant, Coatings Technician and Prestressed Concrete Technician. We do not find as close a match to these Technician 4 jobs.

Having considered all these factors we come to the conclusion that the appropriate rate for the Roofing Specialist is a three step range equal to the top three steps of the ESO 4 classification. This represents an increase to the top rate of 12.25 %. We feel such an increase is in keeping with the conclusion of the Grievance Board which found that Kuntz's duties, "greatly exceeded those contemplated in the Services Supervisor 2 class standard".

DATED THIS 29th DAY OF NOVEMBER, 1991

DOUGLAS C. STANLEY, CHAIRMAN

LARRY ROBBINS, NOMINEE

see attached

J. R. SCOTT, NOMINEE

DISSENT OF J.R. SCOTT

I have considered the award in this matter and must respectfully dissent from its conclusions.

The award indicated (p.3) that the Board had directed its mind to all of the factors submitted by the Parties but I find myself in disagreement with the weight given by the Board to certain of these factors.

There was common ground between the Parties on two of the factors which should be considered by the Board:

1) The conditions of employment in similar occupations outside the Public Service; and,

2) The desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees.

However, the Parties disagree as to the weight which should be accorded to these two factors.

The union took the position that a matching with other jobs in the Public Service was "more likely to yield fruitful results" because, as claimed in their brief (p.19) "It is difficult to find similar occupations outside the Public Service with which to compare the roofing specialist."

The employer, on the other hand, had no difficulty in finding similar occupations outside the Public Service. They submitted to the Board the results of a survey of outside organizations through which they identified six organizations which employed people who are considered "specialists in roofing" and who performed work comparable to that of the Roofing Specialist in the Ontario Public Service. The survey also established that these employees carried out applied research, are involved in contract administration, require a level of education equivalent to architectural technologist and from five to ten years experience, all of which are requirements of the OPS Roofing Specialist.

The maximum salary for the roofing specialists in these private sector companies for 1991, ranged between $35,000 and $50,000 with an average of $41,833 (Employer's Brief, p.23).

The employer indicated that in negotiations on the salary for this new classification they had offered a maximum salary of $48,270, effective December 20, 1989.

In light of the above data, a strong case can be made for the employer's position.

I would suggest, further, that even if weight is accorded only to internal comparisons, as happened in this case, the increase should have been considerably less than the 12.25% awarded by the Board.

J.R. Scott
Employer Nominee

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T/46/90

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, R.S.O. 1980, C.108

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union
(Union Greivance)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Labour)

Respondents

BEFORE:	D. Fraser	Chairperson
	J. Bevan	Member
	L. Robbins	Member

FOR THE APPLICANT: J. Miko
Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE RESPONDENT: M. Farson
Counsel
Fraser & Beatty
Barristers & Solicitors

HEARING: February 18, 1991

This board set a new rate for the new class series Workers' Compensation Adviser 1 and 2 pursuant to Article 5.8 of the collective agreement between the parties, by an award dated June 16, 1990. That was effected by the following language at p.23 of the award.

> "In summary, the rate of the new class series Workers' Compensation Adviser 1 and 2 is increased 14%, effective April 20th, 1988. As requested by the parties, we remain seized to deal with any aspect of implementation, should a problem arise."

Article 5.8 of the collective agreement reads as follows:

> "5.8 When a classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration."

A table of the new rates has been agreed to between the parties, as follows:

ADMINISTRATIVE SERVICES CATEGORY:

AD-09 SOCIAL PROGRAMS GROUP

REVISED COMPENSATION RATES:
(as a result of Award)

WORKERS' COMPENSATION ADVISER 1

Old Rate:	586.03	604.12	623.56	642.98	663.70
Effective					
April 20, 1988:	668.07	688.70	710.86	733.00	756.62
January 1, 1989:	707.42	729.26	752.73	776.17	801.18
January 1, 1990:	752.69	775.93	800.90	825.84	852.46

WORKER'S COMPENSATION ADVISER 2

Old Rate:	722.73	750.17	782.08	815.31	849.75
Effective					
April 20, 1988:	823.91	855.19	891.57	929.45	968.72
January 1, 1989:	872.44	905.56	944.08	984.19	1025.78
January 1, 1990:	928.29	963.52	1004.50	1047.18	1091.43

The employer has implemented these rates by taking an employee at an old rate (for example, $750.17, for a Step Two Workers' Compensation Adviser 2), and slotting that employee within the rate effective April 20th, 1988, at the closest dollar value to the old rate, which is not less than the old rate. Thus the employee previously earning $750.17, would thereafter earn $823.91, which is the Step One rate and which is an increase of approximately 10.9%. Had the employee received the 14% rate increase in the award, he or she would have been placed at the Step Two rate of $855.19, but that was not the case.

The union has asked us to correct this matter as a problem of implementation. It wishes to ensure that employees move to a

similar step in their new rate, to their old rate, so that each receives an increase of 14%, and not a lesser amount. The union has referred to our retention of jurisdiction "to deal with any aspect of implementation", as our authority to do that.

The employer has responded that we have no jurisdiction to do that, for a series of reasons. They are, first, that placement of an employee on a grid is a matter of pay administration, properly dealt with as a grievance of an employee before the Grievance Settlement Board. Second, that such placement relates to merit increases which is a matter for the employer alone under Section 18(1) of the Crown Employees Collective Bargaining Act. That section reads:

> 18. (1) Every collective agreement shall be deemed to provide that it is the exclusive function of the employer to manage, which function, without limiting the generality of the foregoing, includes the right to determine,
>
> (a) employment, appointment, complement, organization, assignment, discipline, dismissal, suspension, work methods and procedures, kinds and locations of equipment and classification of positions; and
>
> (b) merit system, training and development, appraisal and superannuation, the governing principles of which are subject to review by the employer with the bargaining agent,
>
> and such matters will not be the subject of collective bargaining nor come within the jurisdiction of a board.

Third, that the matter before us involves a classification grievance of individual employees, which is also a matter for the

Grievance Settlement Board. Fourth, that this board is not mandated to remedy individual rights under the collective agreement, which is a matter for the Grievance Settlement Board. Fifth, that the union's request is one for us to enforce our award, and to apply and administer new pay rates, none of which is within our jurisdiction. Sixth, that we are indeed empowered with jurisdiction to do anything incidental to setting a rate, as is found at p.21 of our earlier award, but the union is requesting us to do something that is not incidental to setting a rate.

Thus the employer is claiming, among other things, that for us to ensure that employees move to a similar step in their new rate, thus receiving a 14% increase, is a matter beyond our jurisdiction as it either involves an employee's grievance, or represents enforcement of our earlier award.

The union has responded in some detail that it is neither of these matters. The union has submitted that setting a rate by simply declaring an increase in that rate of 14% is a meaningless exercise, where such is implemented by management by giving employees the minimum possible increase, in most cases substantially less than 14%. The principle espoused by the employer of freedom to place an employee where it wishes, on a new grid, could result at another time in employees receiving a decrease, because if one can place an employee on a grid at will,

there is no reason in principle why a higher paid employee could be placed on a new grid at a lower salary than he or she had been receiving. That would make the rate-setting exercise a further absurdity. Furthermore, this is patently a matter of implementation, and both parties have agreed that the board has retained a jurisdiction, in the clearest possible language in the award.

We view this matter in the following way. First, Article 5.8 of the collective agreement requires us to determine a rate. The most relevant definition of "rate" found in the Concise Oxford Dictionary (7th ed.), at p.858, is to "assign value to (work, power of machine, etc.)", or for our purpose, to "assign value to work". Therefore, when a new rate is set for workers, one is not merely changing the numbers on a grid which exists in vacuo, which has no consequence except that the numbers on the grid cannot change thereafter. One is patently assigning value to work, for which that grid is a symbol. Secondly, a grid represents varied, discrete levels of work. That is its reason for being. It follows that setting a new rate for a grid is an exercise in setting a new value for the varied and discrete levels of work in that grid. In other words, the work that was done and valued at $750.17 on the old grid, has by the rate increase of 14%, been re-evaluated at $855.19.

Therefore, pursuant to our jurisdiction to set a rate, and to do anything incidental to that, including our duty to set a rate that is effective and not meaningless; and pursuant to the very clear jurisdiction granted us by the parties in respect of implementation, we declare that the work done at any and each level on the "old" grid has been re-evalued at a level 14% higher on the new grid produced by our award. Therefore an employee previously earning $750.17, at the old rate, has had his or her work re-evalued by the new rate at $855.19.

It seems obvious that any employee should thus receive a minimum 14% increase on moving to the new grid, however actual questions of enforcement pertaining to individual employees will have to be resolved between the Grievance Settlement Board in the event of a dispute.

Dated at Ottawa
this 26th day of April , 1991

D. Fraser, Chair

Jane Bevan, Employee Nominee

Larry Robbins, Union Nominee

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T/0004/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Communications Operators)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Health, Ministry of Natural Resources,
Ministry of the Solicitor General, Ministry of Transportation)

Respondent

BEFORE:	B. Keller	Vice-Chairperson
	L. Robbins	Member
	W. Lobriaco	Member
FOR THE APPLICANT:	B. Gould Negotiator Ontario Public Service Employees Union	
FOR THE RESPONDENT:	K. Brown Counsel Legal Services Branch Management Board of Cabinet	
HEARING:	December 12, 1991	

AWARD

This matter concerns a wage dispute pursuant to article 5.8.1 of the collective agreement. The group in question were Radio Operators who work in the Ministries of Health, Natural Resources, Solicitor General and Transportation. In the future then employees will be known as Communications Operators. There are approximately 550 such employees, including unclassified and part-time. Fifty-seven per cent are employed in the Ministry of the Solicitor General, 28% at Health, 12% at Transportation and fewer than 3% at Natural Resources.

Almost 85% of the group is at level 2, (there are three levels) which is the working level of this class series.

In September 1987, the Operators at Solicitor General filed classification grievances. Shortly thereafter additional grievances were filed by employees at Health and Transportation. Eventually there was a consolidation of the grievances into six groups for presentation to the Grievance Settlement Award. At the same time, according to the employer, the ministries were

concerned about aspects of the job which they felt were not fully described in the existing class standards. There was also, apparently, recognition that if the matter proceeded to hearing before the GSB the likely outcome would be a Berry type award. The parties agreed to adjourn the hearings and the employer to review and revise the class standard as necessary. A new standard was finally agreed to in February 1990 to be made effective August 13 of that year.

The parties subsequently met to negotiate a new salary grid. Mediation followed. Unable to agree, the parties then referred the matter to this board for determination.

The preambles to the old and new standards read as follows.

RADIO OPERATOR SERIES

> Included in the Radio Operator series are positions of employees operating a fixed or multi-channel HF, VHF or UHF two-way AM or FM radios and ancillary equipment such as teletypes, facsimile telecopiers, generators, telephones, computer terminals and standby emergency generators. They facilitate head office to field communications and/or dispatch or co-ordinate emergency or enforcement services which may be air-borne, marine or land-based. They may also provide group leadership to positions engaged in carrying out any of the

foregoing activities.

The performance of this work requires a knowledge of the operational aspects of ministry communication systems; the geography of areas being serviced; and ministry procedures and regulations governing radio operations.

In the Radio Operator series, level determination is based on the extent to which the following factors are reflected in a position's duties and responsibilities.

JUDGEMENT:

Takes into consideration the variety and complexity of situations encountered, the degree of independent judgement exercised and the working environment in which decisions are made.

CONSEQUENCE OF ERRORS:

Takes into consideration the degree to which errors in judgement could affect the life, safety and well-being of fellow workers and members of the general public as well as occasion property loss or damage. Also considered is the extent to which errors could detrimentally affect the quality of services being provided and whether or not errors once made could be successfully rectified.

CONTACTS:

Takes into consideration the purpose for which contacts are made, the scope they encompass, the communication modes employed in making them, and the frequency with which they occur.

Employees in this series may be subject to federal or provincial legislation governing licensing of Radio Operators and Dispatchers, but for position evaluation purposes, such requirements do not constitute compensable factors.

COMMUNICATIONS OPERATOR

The Communications Operator series covers positions primarily responsible for communication, information and dispatch services, on a local, regional or provincial basis, in response to calls from the public, field offices, patrol vehicles, aircraft, marine and emergency services such as police, fire, ambulance services, and medical facilities. Positions in this series may also provide group leadership to positions engaged in carrying out any of the foregoing activities.

The performance of this work requires good communication skills in order to decipher incomplete information, assess the needs and provide appropriate responses to the situation; a knowledge of the local ministry operations; the geography of areas being serviced; and ministry procedures and regulations governing communications operations.

Responsibilities include:

- eliciting information from callers regarding the nature of their situations and providing instruction or direction as required.

- determining the type of vehicle or personnel to dispatch depending on the circumstances.

- contacting external agencies to request and co-ordinate their services.

- maintaining and monitoring communications with dispatched vehicles, personnel, field offices and external agencies.

- operating a variety of communications equipment such as a fixed or multi-channel two-way radio, telephone control console, facsimile, and computer terminals.

- related clerical or administrative duties such as maintaining and updating information on availability of resources and equipment, road conditions, etc.

Allocation Criteria

In the Communications Operator series, allocation is based on the following factors:

Knowledge

This factor measures:

- the depth and breadth of knowledge of legislation, internal/external policies, procedures and practices and local ministry operations.

Accountability

This factor measures:

- the level and scope of responsibility required for providing a communications service

- impact of errors

Judgement

This factor measures:

- the nature and scope of decision-making

- the degree to which these are governed by policy, procedure and guidelines

- the level of supervision received

The Union made detailed comparisons between the old and the new standards in an attempt to demonstrate to the Board the expansion

of the duties and responsibilities of the employees in this group. The comparison was made in a full and detailed brief which compares the old and new standard section by section and line by line.

The brief was summarized in the following general fashion:

> In the same way as the first page of the new class standard goes well beyond the Preamble of the old one, so do the standards for each of the three classifications. Each standard represents an advance, an enlargement, an increase in qualifications and an addition to the duties and responsibilities compared to the old one.
>
> Overall, the new standard may be said to be as different from the old one as night is from day or, better still, as summer is from winter. In summer, one or two layers of clothing are enough for normal wear and social life, and often more than enough to keep warm. In winter, we need three layers just to keep warm and, when we go out, we have to wear a coat or some other heavy garment, plus overshoes, gloves and a hat or toque. Similarly, the duties and responsibilities set out in the new standard are broader and more demanding than those in the old one. Operators are accountable for more numerous and detailed tasks, the consequences of errors are more serious and the stress under which they work is greater. Just as winter clothing is more expensive than summer clothing, if only because we need more of it, so the rates of pay appropriate to the new standard, reflecting as it does the work which the Operators now in fact do, must be higher than the rates

> set on the basis of the old standard which may in the past have reflected the work of Radio Operators but plainly no longer does so.

Following the detailed analysis of the job, the union proposed that internal comparison would be made with certain other jobs in the public service - Transport Controller Analyst, classified as Office Administrator 11 and Communications Operator, classified as Office Administrator 6.

The union also made three external comparisons - Ambulance Dispatcher, Metro Toronto, Sergeants of the Ontario Provincial Police who, according to the union have replaced most Radio Operator 3, and Communications Operators employed by municipal and regional police forces in Ontario.

The rates of pay for the group used as comparitors were then manipulated in various ways by the union. The result was a request for a wage increase of between 25.7 and 28.7%.

The essence of the position taken by the employer is that the jobs didn't change on August 13. There was an acknowledgement

that there has been some change over the 12 years that the old class standard was in place but, it is suggested, the changes relate to the tools used to do the job and not the job itself. The employer further submitted that different comparable factors are used to reflect the differences between levels but as they are different in the old and new, factor comparisons are not possible in many instances. The employer then presented a grid comparing the level 2 jobs:

The following points reflect the degree of comparability which exists between the Radio Operator 2 and the Communications Operator 2.

Radio Operator 2	Communications Operator 2
• Wide ranging and diverse situations many of which are of an emergency nature.	• The ability to remain calm in emergency situations.
• Knowledge is required of the geography of areas being serviced.	• Map reading skills and knowledge of areas being served.
• Wide ranging diverse situations.	• Apply a wide range of established criteria to diverse situations.
• Which are of an emergency nature.	• Situations which may be of an emergency nature.
• In an environment characterized by high volume, rapidly changing demands and workload fluctuations which cannot be operator-controlled.	• Rapidly changing demands and workload fluctuations beyond the operator's control.

• Decisions must often be made quickly and without access to higher decision making authority for advice and guidance.	• Promptly apply a wide range of established criteria to diverse situations where little direct supervision is provided.
• Maximize the use of available resources via judicious dispatching.	• Assessing the seriousness of the situation...dispatching vehicles... re-allocating resources.
• Constantly monitor transmissions.	• Maintain contact with them (external agencies) to ensure the continuance of effective service.
• Establishing priorities.	• Setting priorities.
• Errors in judgement could seriously endanger the life, safety and well being of the general public and fellow workers as well as occasion property loss or damage.	• The failure to contact personnel, re-allocate resources, set priorities or assess and modify resource plans could result in delay of service, property damage or possible injury or death.
• Characterized by a greater than average frequency and involve a wide ranging variety of situations and occurrences many of which must be dealt with differently.	• The volume and nature of calls which can vary in accordance with rapidly changing demands and workload fluctuations and information and dispatch services relating to wide ranging and diverse situations.

Conclusion comparisons strongly indicate that Radio Operator and Communications Operator 2 represent duties and responsibilities which are of relatively equal value.

Having made the above submissions to the board, the employer then went on to say in its brief:

"Two types of organizations outside the Ontario Public Service have employees with jobs comparable to those of Communication Officers. These are Ambulance Dispatch Services and Police Dispatch Services located in Municipalities and regional jurisdictions."

A survey table was provided, the results of which showed that the average salary of those surveyed was, for 1990, 6.3% more than the maximum attributable to the Communications Operator 2. That, the Board was told indicates that no rate increase is warranted as a rate of + or - 10% is considered to be comparable.

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In the instant case this Board has not had the advantage of a GSB decision to which it can refer. Such a decision would normally be helpful in first determining the extent of the differences between the classifications in dispute and second, more precisely the nature of the new classification. Having said that, not having the matter adjudicated by the GSB is also useful. It has meant (and it was not denied by the employer) that there were sufficient changes in the classification over the last 12 years to warrant a new one and this was sufficiently clear to the employer that it was realized without having recourse to a third party by the union.

In addition to this tacit (if not express) admission by the employer that there are distinguishing features between the new and old standards, our review of the analysis done by the union bears this out. We are satisfied that the various duties, responsibilities, skills and knowledge expected of Communications Officers are significantly greater than what was envisaged of Radio Operators when their class standard was developed in 1979. We are further satisfied that this involves more than the use of different and more sophisticated tools to do the job but relates to the performance of the job itself.

Our conclusion then, is that Communication Officers warrant an increase in rates over what was paid to Radio Operators. The determination of the amount of the increase was, to some extent at least, simplified by the employer proposing that a proper external comparison be made with police and ambulance dispatchers. This was a similar comparison to one proposed by the union, the essential difference being the universe surveyed. In terms of the internal comparisons proposed by the union we have determined that they are at best forced comparisons and don't warrant being used in this exercise.

If we focus on the external comparison we find that the employer's survey includes 37 observations with the number of employees at each location ranging from 59 in Orillia to 7,660 in Metro Toronto. The survey results yield a maximum salary for 1990 that is 6.3% ahead of that of Radio Operators level 2 maximum.

The union surveyed 17 municipal and regional police forces. That survey excluded the smaller centres included in the employer's survey. It yielded a higher percentage increase. The union also surveyed the same forces for 1991 which yielded a significantly higher rate, with a maximum average salary of 12.8% ahead of the current Radio Operator level 2 maximum.

The union surveyed 17 municipal and regional police forces. That

In the instant case, the rate this Board has to determine is to be effective August 13, 1990 to extend throughout 1991. It is our view, therefore, that considerable weight must be given to the 1991 data. If we consider the data presented by the parties for both 1990 and 1991, giving proportionally more weight to the

1991 figures, we find that a wage increase of 11% is appropriate for the Communications Officer 2 level maximum (the agreed upon benchmark). This figure still results in a rate at January 1, 1991 that is lower than the average of the municipalities surveyed by the union but a rate that is beginning to approach it.

The Board, therefore, awards an across the board increase of 11% to all classifications retroactive to August 13, 1990. We remain seized in the event of any dispute over implementation.

Nepean, Ontario this 15 day of January 1992.

M. Brian Keller, Arbitrator

I ~~concur~~/dissent — Dissent attached.

William Lobraico, Employer Nominee

I concur/~~dissent~~

Larry Robbins, Union Nominee

DISSENT

Re: T/0004/91 Wage Dispute
Communication Operators 1-3

I am unable to agree with the 11% increase provided ~~by~~ for in this award as it is not based on 1990 data. The task of this Board was to determine an appropriate rate for Communication Operator 2 effective August 13, 1990 and 1991 data provided by the Union should have been disregarded. The particular group of employees are included in the Maintenance Services Category which received increases of 6.8% January 1, 1990 and 5.78% January 1, 1991. Adding 11% to this group effective August 13, 1990 seems excessive. It may be possible that the Communication Operators received more than these percentages and that is another reason why we should ignore the 1991 data provided by the Union. The Employers position that not much had changed and salaries were only 6.3% behind similar external positions was more reasonable. An award of this amount would have been sufficient and more in line with the fiscal situation in Ontario and the need for salary restraint.

William Lobraico
February 5, 1992

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T/0009/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Utility Plant Instrument Technician)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of the Environment)

Respondent

BEFORE:	M. Saltman	Vice-Chairperson
	L. Robbins	Member
	A. Mitchell	Member

FOR THE APPLICANT: J. Miko
Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE RESPONDENT: E. Johnson
Staff Relations Officer
Management Board of Cabinet

HEARING: February 25, 1992
May 7, 1992

A W A R D

This arbitration concerns the establishment of a salary range for the Utility Plant Instrument Technician ("UPIT") class. This class consists of one position in the Ministry of the Environment which provides "electronic and/or electrical, mechanical, pneumatic and other instrumentation technology services to a water treatment and distribution plant in order to ensure that all instrumentation, control measuring and monitoring systems are operational, accurate and effective". As of the date of the hearings, there was a single incumbent in the position, namely, John Beach, who was employed in the Utility Operations Section of the Ministry at Nanticoke.

Mr. Beach has been employed in his present position since June, 1978. In May, 1986, he requested a review of his position specification so as to better reflect his actual duties and responsibilities. While the review was underway, Mr. Beach filed a grievance claiming that he was improperly classified as an Electronics Technician in the Technical Services Category. The grievance was referred to the Grievance Settlement Board ("G.S.B."), which issued its award on July 5, 1990: see Beach, G.S.B. 816/86. The G.S.B. found that although Mr. Beach "clearly performed the sort of duties as contemplated by the class standard .... he also performed other significant duties not covered in the class standard". Among those duties not covered by the class standard were:

(1) the design and modification of existing equipment: Although the class standard then in effect makes reference to the "installation, adjustment, repair and maintenance of electronic devices" (referred to in the award as "typical skilled journeyman duties"), the G.S.B. held that the "creative elements of design and modification put the Grievor more into a designer or technologist type of category";

(2) purchasing functions: According to the G.S.B., while it may be within the ambit of a Journeyman to do purchasing of a repetitive nature, such as would be involved in choosing from a pre-selected group of items of the sort found in a government-approved catalogue, the Grievor's duties included researching products, procuring literature from suppliers, maintaining manuals and comparing prices, which went "well beyond" routine journeyman-like functions. In effect, the G.S.B. found that the Grievor acted as his own purchasing agent and, although his purchases required the approval of the Supervisor, approval was routinely given; and

(3) external contacts: According to the G.S.B., although a Journeyman would not be expected to have

> extensive external contacts, the Grievor maintained "regular and fairly extensive" external contacts, including attendance at trade shows, dealing with sales personnel and correspondence with suppliers.

As a result, the G.S.B. found that the Grievor was improperly classified as an Electronics Technician and directed the Employer to classify him correctly.

In accordance with the G.S.B.'s direction, the Employer prepared a new standard for the UPIT class. This standard, which was agreed to by the Union, was approved by the Civil Service Commission on or about November 7, 1990. The revised class standard is set out as Appendix "A" herein. For purposes of comparison, the old class standard is set out at Appendix "B".

Following approval by the Civil Service Commission, the parties entered into negotiations to establish a salary range for the revised class standard. However, as they were unable to agree upon an appropriate salary range, they referred the matter to this Board of Arbitration for a determination pursuant to the provisions of Article 5.8.1 of the collective agreement.

The Employer took the position that although the revised class standard is more detailed and contains additional duties and responsibilities not covered in the old standard, a salary increase

is not warranted as there has been no substantial change in job function. The Union, on the other hand, took the position that as the new class standard contains duties and responsibilities not covered in the old class standard, the incumbent ought to be remunerated at a higher level.

In deciding between these respective positions, it is necessary to compare the old and new class standards. A comparison of these standards reveals significant differences in job content. As a starting point, the class definitions differ in that the new standard refers to "electronic/electrical, mechanical, pneumatic and other instrumentation technology services", which involves a higher level of skills than "skilled technical work at the journeyman level" referred to in the old standard. Apart from the class definition, there are also significant differences in the characteristic duties enumerated in the old and new class standards. For instance, although the new standard includes reference to troubleshooting various instrumentation control systems and measuring devices, there is no reference to troubleshooting in the old standard. Moreover, although the old class standard refers to the installation, adjustment, repair and maintenance of electronic devices and complex electrical equipment, the new class standard goes beyond these functions to include the design and modification of certain instrumentation control systems and measuring devices, as well as responsibility for ensuring that the installation of these control systems are in accordance with drawings and specific-

ations and are operating in accordance with warranty terms. Furthermore, the new standard refers to computerized control systems whereas computer technology is not mentioned in the old standard. Finally, there is reference in the new class standard to (1) the preparation of reports on repairs which have been effected; (2) the performance of detailed preventative maintenance programmes; and (3) the provision of technical assistance to other staff, as required. By way of contrast, the old class standard is devoid of reference to any of these matters although there is reference to the instruction and supervision of unskilled workers and tradesmen in relation to certain specified functions.

The changes in duties and responsibilities in the new class standard are reflected in the skills and knowledge requirement set out in the standard. In particular, the new class standard requires, among other matters, (1) proficiency in the installation, repair, modification, design and testing of electronic instrumentation control and measuring systems; (2) a good knowledge of electronic/electrical, mechanical and pneumatic tools and equipment and of computerized control systems, telemetering systems and electrical equipment in order to perform trouble-shooting, diagnostic and repair functions; (3) knowledge of legislation, codes and regulations governing electrical installation; and (4) the ability to work from and provide schematics and drawings in order to resolve technical problems. By way of contrast, the qualifications under the old class standard corres-

pond to the journeyman level of the work involved. For instance, there is reference to completion of a recognized apprenticeship programme for the electrical trade; some training in electronic theory and practice at a recognized vocational school or an equivalent combination of experience and education. Moreover, there is a requirement for at least one year of experience as an Electrician engaged in the repair and maintenance of electronic and electrical equipment, as well as a working knowledge of the tools, equipment, methods and practices of the electrical trade. There is also reference to a working knowledge of the bylaws and regulations relating to electrical installations and the ability to work from manufacturers' and designers' wiring diagrams, which is subsumed within the higher skill level of the new class standard.

As indicated at the outset, the G.S.B. found that, in addition to the duties and responsibilities set out in the class standard, the Grievor was performing duties which went beyond the class standard. As a result, the G.S.B. directed the Employer to prepare a new class standard which properly reflected the Grievor's duties and responsibilities. Pursuant to that direction, the standard for the UPIT class was prepared and approved by the Civil Service Commission. A comparison of the old and new class standards reveals significant duties and responsibilities in the new standard which are not covered in the old standard. In these circumstances, it cannot seriously be suggested that a salary in-

crease is not warranted. Accordingly, for the purposes of establishing a salary range for the new class standard, the comparisons referred to by the Employer, all of which have a lower salary range than the UPIT classification, are not of assistance.

For its part, the Union offered comparisons with one classification within the Public Service and three outside the Public Service (two being at Ontario Hydro and one at the Stelco installation at Nanticoke). Without detailed evidence on these classifications, the external comparisons are difficult to make. Nevertheless, the information which is available suggests that these classifications have to do with the installation, inspection, repair and maintenance of electrical and/or electronic equipment, instrumentation and control systems and that they are paid at substantially higher rates of pay than the UPIT classification. While there is some overlap with the UPIT classification, at least one of these classifications requires a higher level of knowledge.

As for internal comparisons, the Union claimed that the incumbent was performing work just below the Environmental Officer 3 level. Although this comparison is not particularly compelling, we note that the incumbent of the UPIT classification was performing duties and responsibilities at a level beyond that of Environmental Officer 1, the entry level, which is paid at maximum 5 percent more than the UPIT classification. In fact, it would be more accurate to suggest that the incumbent was working at a level

between Environmental Officer 1 and Environmental Officer 2, which is identified as the junior working level and is paid 16.4 percent more at maximum than the UPIT classification.

In any event, taking into account the significant duties encompassed in the new class standard which are not covered in the old standard and, more particularly, those duties and responsibilities which involve the provision of technological services, the Board is of the view that a substantial increase is warranted. In the result and although the establishment of salary rates is not a matter of precision, having considered all of the circumstances, the Board awards a salary rate of $19.39 per hour at minimum and $19.85 per hour at maximum for the UPIT class. This rate shall be payable from November 7, 1990, the date of approval of the revised class standard by the Civil Service Commission. The appropriate negotiated increases would then be applied for subsequent years.

The Board will remain seised in the event that difficulties arise in the implementation of this award.

DATED AT TORONTO, this 4th day of January, 1993.

Maureen Sol
Vice-Chairperson

"A. Mitchell - See Attached Addendum"
Employer Nominee

"L. Robbins"
Union Nominee

APPENDIX "A"

CLASS STANDARDS

Category	Group
TECHNICAL SERVICES	TS-01 COMMUNICATIONS

Series	Class Code
UTILITY PLANT INSTRUMENT TECHNICIAN	

UTILITY PLANT INSTRUMENT TECHNICIAN

This class covers positions that provide electronic/electrical, mechanical, pneumatic and other instrumentation technology services to a water treatment and distribution plant to ensure all instrumentation, control measuring and monitoring systems are operational, accurate and effective. They work under general supervision, and within prescribed Ontario Hydro electrical codes and other relevant legislation, regulations, and standards.

Employees troubleshoot, repair and calibrate a variety of devices such as recorders, process control systems equipment, telemetering systems, using for testing and calibrating such equipment as multimeter, programmer, simulator, etc. They construct, install and maintain a variety of instrumentation equipment and accessories for plant and off site process control systems and ensure newly installed instrument control systems are in accordance with drawings and specifications and are operating in accordance with warranty terms. Also, they repair and/or modify circuitry, mechanical and pneumatic devices, conduct switch repairs and wiring, and make bench repairs when necessary.

Incumbents investigate plant shutdowns where instrument and electrical components or equipment are involved. They maintain computer hardware and peripheral systems as required. In consultation with the operating staff, they inspect electrical motors and pumps.

The employees design and modify instrumentation equipment and accessories such as shut down, bubbler, instrument control and pneumatic calibration systems. They review, test and examine new instrumentation, recommending purchase or upgrade. They contact and correspond with manufacturers/suppliers for information, quotes and placement of approved orders for products, maintain product manuals and compare prices. Also, they attend conferences and trade shows to keep current with technological advances and changes.

Employees maintain detailed drawings of new installations, modifications, and designs. They prepare and maintain reports of their repairs to equipment and instrumentation as well as records of maintenance performed, of requests for equipment and parts and of stock on hand. Employees also carry out detailed preventative maintenance program/s. They provide technical guidance to other staff, as necessary.

SKILLS AND KNOWLEDGE

- proficiency in the installation, repair, modification, design and testing of new and existing electronic instrumentation controls and measuring systems in a large industrial facility.
- good knowledge of electronic/electrical, mechanical, pneumatic, and other equipment and tools of the trade and of computerized control systems, telemetering systems, and electrical equipment to troubleshoot, diagnose and repair malfunctions.
- knowledge of the legislation, codes, and regulations governing electrical installations.
- ability to work from and provide schematics and drawings and to resolve technical problems.
- good oral and written communication skills.

APPENDIX "B"

ELECTRONICS TECHNICIAN

CLASS DEFINITION:

This is skilled technical work at the journeyman level involving installation, adjustment, repair and maintenance of electronic devices and complex electrical equipment. This would include toll payment controls at bridges, traffic and lighting controls, highway lighting and illumination systems. These employees receive general supervision from Maintenance Electrician Foremen or other supervisors, referring only major problems for direction. They may supervise and instruct helpers and may act as sub-foremen of electrical crews. These employees may be required to perform related maintenance tasks but at least sixty percent of their work requires electronic-electrical skill.

CHARACTERISTIC DUTIES:

Check, repair and adjust such electronic and electrical apparatus as bridge toll equipment, electronic amplifiers, sun switches, circuit breakers, traffic light controls.

Make necessary repairs to highway lighting and illumination systems.

May instruct and supervise unskilled workers or other tradesmen in this work.

Carry out routine cleaning and maintenance on electronic and electrical equipment at regular intervals.

QUALIFICATIONS:

1. Completion of the recognized apprenticeship in the electrical trade; some training in electronic theory and practice at a recognized trade or vocational school; or an equivalent combination of education and experience.

2. At least one year of experience as an Electrician engaged in the repair and maintenance of electronic and electrical equipment.

3. A working knowledge of the tools, equipment, methods and practices of the electrical trade; a working knowledge of the by-laws and regulations relating to electrical installations; ability to work from manufacturers and designers wiring diagrams; instructional ability; good physical condition.

WAGE DISPUTE PURSUANT TO ARTICLE 5.8.1

UTILITY PLANT INSTRUMENTATION TECHNICIAN

COMMENT:

Although I concur with the attached award, I feel that it is desirable to comment on the matters which have led to my concurrence.

As indicated in the award, the new classification of Utility Plant Instrumentation Technician was established to cover a single-incumbent position heretofore classified as Electronics Technician.

Union brief draws comparison to Environmental Officer 1
Environmental Officer 2
Environmental Officer 3

and, externally, to

Tech., Electrical & Instrumentation (Ont. Hydro)

Shift Maintainer 1 (Control) Thermal (Ont Hydro)

Instrument & Combustion Tech. (Stelco)

Firstly, although there may very well be valid comparisons, in terms of job content, skills and knowledge, to positions in Ontario Hydro, the Ontario Public Service throughout many years of salary negotiation has failed to convince Management Board that OPS jobs should be paid on a par with Ontario Hydro positions. I think the standard response has been to the effect that Hydro is only one of many employers to which comparisons are made.....

Similarly, comparisons to positions and salaries in high paying industries, such as automobile manufacturers, construction companies and steel companies, have tended to be discounted because of the general lack of security attached to these endeavours - the propensity for periodic layoffs, etc. Therefore, it would seem to be inappropriate to use a direct comparison to the Stelco position.

This contention is further supported by the philosophy that internal relationships are more meaningful in such situations as this where the main argument is that, within the OPS compensation system, the position under review was incorrectly classified and, therefore, the wages paid were at least suspect.

Therefore, I would discount the external comparisons and arguments and consider the worth of the position and its new class in relation to other positions in OPS.

Turning now to the Employers' submission, there was no reference to any external positions. The *internal* comparisons were as follows:

Maintenance Electrician

Communications Technician 2

Instrument Repairer 2

Purchasing Officer 1

I have reviewed all of the foregoing, independent of the views expressed by the Employer, and as indicated earlier I would discount in their entirety the *external* comparisons put forth by the Union.

This, then, leaves only the Union's comparison to the Environmental Officer series for comment and I would agree with the contention that Environmental Officer 1 does not meet the level of responsibility and judgement, or relative independence from supervision, enjoyed by the Utility Plant Instrument Technician. However, with regard to the Union comparison to Environmental Officer 2, it is difficult to see the Utility Plant position as being at or above the Env. Off. 2 level. The latter requires a much wider range of technical knowledge relating to industrial and municipal environmental control, pollution abatement and land use practices etc. The Environmental Officer 3 positions are responsible for investigation *and enforcement*, among other things, and are therefore far more onerous than the Utility Plant position.

Thus, there would seem to be a possibility of placing the value of the Utility Plant position at a salary level a little above Environmental Officer 1.

The Union has made much of the hierarchy regarding ***Tradespersons, Technicians and Technologists*** and seems to conclude that Technicians should automatically be paid more than Tradespersons and perhaps that Technologists should be paid more than either. This view is not supported by the facts:

Maintenance Electrician (a *Tradesperson)* is paid more than

Communications *Technician* 2 which, in turn, is paid *less* than

Instrument Repairer 2 (a *Tradesperson, presumably because of the Apprenticeship need)*

Finally, there is a whole range of *"Technician"* classes whose salaries are substantially below ANY of the *"Trades"* classes, the

lowest being Technician 1, Traffic.
This, then, would seem to refute any suggestion of the Union that ALL Technicians are worth more than ALL Tradespersons and should not, therefore, influence the outcome of this submission.

NEVERTHELESS, the Grievance Settlement Board did characterize Mr. Beach's skills and duties as being greater than those covered in the Electronics Technician class standard. Thus, it would seem that this Arbitration has no alternative but to establish a salary greater than that of Electronics Technician for the new class of Utility Plant Instrument Technician.

Although I would have suggested a rate closer to that of Environmental Officer 1 the new maximum rate awarded for UTILITY PLANT INSTRUMENT TECHNICIAN of $19.85 per hour fits into the OPS compensation hierarchy as follows:

	1990
Communications Tech 2	16.94
Maintenance Electrician	17.29
Purchasing Officer 1	17.42
Electronics Technician	17.57
Instrument Repairer 2	18.02
Environmental Officer 1	18.45
Utility Plant Instrument Technician	*19.85*
Environmental Officer 2	20.45

This rate of $19.85 per hour in 1990 would maintain the previously recognized value of the position as being stronger than Maintenance Electrician as well as addressing the Grievance Settlement Board's characterization of the grievor's function as being of greater value than Electronics Technician. It also addresses the Union view that the Purchasing content of the position is stronger than Purchasing Officer 1 and that the job is essentially stronger than Environmental Officer 1. However, it confirms the opinion expressed previously that Mr. Beach's position does not meet the level of responibility and judgement envisioned in the Environmental Officer 2 standard.

For the foregoing reasons, I concur with the attached award.

Alistair Mitchell, Employer Nominee. December 18,1992

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T/0020/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Contract Review Officer)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Transportation)

Respondent

BEFORE:	B. Keller	Vice-Chairperson
	L. Robbins	Member
	V. Peperkorn	Member
FOR THE APPLICANT:	J. Miko Job Evaluation Officer Ontario Public Service Employees Union	
FOR THE RESPONDENT:	K. Brown Staff Relations Officer Management Board of Cabinet	
HEARING:	February 3, 1992 April 13, 1992	

DECISION

This is an arbitration pursuant to section 5.8.1 of the Collective Agreement with respect to Working Conditions and Employee Benefits, which provides as follows:

> 5.8.1. When a new classification is to be created or an existing classification is to be reviewed, at the request of either party, the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

The grievor in the instant case was classified as a Specification Officer 3 (Atypical). He had held that position since August 1985. In January 1989, he grieved that he was improperly classified. The matter was referred to the Grievance Settlement Board for determination but before a hearing could be held the parties reached a settlement which they agreed would be made an Order of the Board.

The parties subsequently met and a final text of a new class

standard (Contract Review Officer) was eventually arrived at. It was also agreed that the wages appropriate for the new class standard would become effective as of October 22, 1990. The grievor is the only employee to be affected by this decision.

The old and new class standards read as follows:

SPECIFICATION OFFICER 3

Characteristics of positions in this class is the provision of technical supervision to less senior Specification Officers, in the writing of specifications, monitoring the work of architects and engineers and in research projects which may be policy oriented, materials and systems or statistical in nature. They also provide instruction and training for lower level officers and check their work.

In addition, these employees may produce specifications for the largest and most complex projects, including the hiring and supervision of professional consultants in specialized areas.

The very nature of positions qualifying for this class limits the number of positions/incumbents. These employees work with considerable independence.

SKILLS AND KNOWLEDGE:

A good knowledge of architecture, engineering, material costs and general estimating. Good knowledge of construction law and a sound knowledge of tendering and specifications.

Ability to analyze contract systems and documents, prepare and co-ordinate specifications; direct support

staff; communicate and co-operate with professional and technical staff.

October 1, 1974

CONTRACT REVIEW OFFICER

This class covers positions responsible for the regional review process of tendering documents and drawings of highway transportation and related projects. Employees monitor and confirm the contract drawings and documents prepared by ministry and consultant staff are in compliance with ministry design policy, procedure, practices and standards, preparing contract addenda as required. In addition, they provide input and advice on new or proposed revisions to ministry policy, procedure, standards or practice on specific contract related matters and may co-ordinate a response on behalf of the region.

TYPICAL DUTIES

Under general supervision, employees provide advice and direction to regional and consultant engineering and technical staff to ensure the correct application of ministry policy, procedure, practice and standards regarding the design documentation and preparation of highway transportation and related projects, suggesting alternatives to ensure compliance. Throughout the assembling and printing stages of the tendering process, they liaise with head office determining the impact of and resolving their concerns. During the advertising stage of the tendering process, they act as regional tendering co-ordinator for all inquiries from contract preparation and control section by providing clarification, interpretation of the tender documents and deciding on appropriate action, in consultation with regional staff.

They are regional co-ordinator for the head office document review unit process, the plan quantity payment review process, the project construction report

process, the post construction evaluation report process and the tender analysis and payment system, ensuring timely reviews by regional staff and co-ordinating preparation of replies for the region.

They participate in and may chair various review meetings, represent the region on task forces and committees, and recommend improvements to the preparation of contract drawings and documents. They provide technical guidance and instruction to temporarily assigned staff. They may organize the implementation of in-house training and seminars and may act as a resource person for staff training. They organize and maintain a variety of files and records.

Skills and Knowledge

Positions require a thorough knowledge of the ministry contractual system and contractual policies and procedures pertaining to design and construction, including the ability to understand the responsibilities of the contractor and the ministry. Analytical and problem solving skills are needed to resolve deviations from policy or procedure in contract documents. Basic knowledge of micro-computers and computer software packages related to the contract review process. Good coordinating skills, and oral and written communication skills are also required.

In its brief to the Board, and in its oral presentation the Union analyzed what it considered to be the relevant factors:

i) A comparison of the old class standard for Specification Officer 3 with the new one for Contract Review Officer.

ii) A comparison of Mr. Telfer's position specification with the new class standard. The purpose of

this comparison is to show that the class standard has been developed to reflect in general terms the duties and responsibilities of a contract review officer.

We shall then proceed to consider Mr. Telfer's position in light of three of the factors enumerated in Section 12 (2) of the Crown Employees Collective Bargaining Act. They are:

(a) the needs of the Crown and its agencies for qualified employees;

(b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;

(c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees; and

(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered.

Factors (b) and (c) constitute in effect external and internal comparisons. It goes without saying that the rates of pay involved in these comparisons are of cardinal importance. They will accordingly be discussed.

With regard to the second factor listed in Section 12(2), we do not have any external comparisons which would in our view be of help to the Board. As to the fourth factor, it does not appear to add anything specific to what will be presented under the other headings, and we shall accordingly comment on it only briefly in its proper place.

In its analysis of the old class standard with the new, the union conducts an in-depth examination comparing the two and asks the Board to reach the conclusion that a Contract Review Officer is separate and distinct from a Specification Officer 3. It acknowledges that there are some common elements but suggests that the differences are greater and more important.

The union next compared the position specification with the new class standard. According to the union:

> A comparison of the new class standard with the position specification is useful for three reasons. It shows that the new class standard agreed to between the parties appropriately reflects the work which Mr. Telfer now does as set out in the position specification. It shows how the job content has changed with time, with the result that the old class standard was no longer satisfactory and a new one was required. Finally, the position specification is helpful in showing how Mr. Telfer's work compares with the work involved in other jobs whose rates of pay are, in the Union's submission, appropriate benchmarks in the present case.

The union, under the heading of "The Needs of the Crown and Its Agencies for Qualified Employees" submits the following:

> The employer has been able so far to retain Mr. Telfer on the basis of his present salary range largely

> because the change in the relationship of his salary to others is still fairly recent, dating as it does from 1989. Thus, we would argue that Mr. Telfer has been willing to stay at his job in part because of his expectation that his salary would be increased to take account of this change, and because his actual duties and responsibilities which were the basis of his grievance are now reflected in the new class standard.

Under the heading "Internal Comparisons" the union proposes that eight comparisons be made. The first two are: Project Manager and Senior Project Manager. Four Project Managers are classified as TM-17 and two Senior Project Managers as TM-18.

The purpose of the Project Manager's position is

> To provide efficient and effective management for the planning and design of transportation projects and to ensure appropriate project co-ordination and conformance with Ministry policies, procedures and objectives. The projects are moderately complex in terms of planning, engineering and environmental issues, and require a moderate level of external and public contact. To administer and direct the activities of assigned staff and to direct and advise Consulting Engineers on assigned Ministry projects. To provide advice on project related Corridor Control applications ensuring compatibility of public and private developments with existing and future rights-of-way.

The purpose of the Senior Project Manager is identical except that the projects are more complex and there is more external and

public contact. The union submits that the purpose of the grievor's position shows similarities of substance as well as function with that of the Project Manager. It is also submitted that the Skills and Knowledge required of the grievor are equal to the Project Manager and Senior Project Manager in that he must exercise the same measure of judgment and initiative and that the accountability and contents are equal.

A further comparison is made with the Project Engineer and Senior Project Engineer. They are shown on the organization charts as Project Managers. Of the six, four are classified as PEN-17 and two as PEN-18. According to the union the key difference between Project Managers and Project Engineers is that the latter must have an engineering degree and be a member of the Association of Professional Engineers of Ontario.

The next comparison is with the Supervisor Design Services Unit - Planning and Design Section.

The purpose of the position is:

> To organize, supervise and co-ordinate all activities of the Design Services Unit and the technical committees established within the Planning and Design Section.
>
> To represent the Region on a variety of technical committees as required by the Manager of Engineering and Right-of-Way and the Section Head.
>
> To assist the Section Head in resolving administrative and technical problems.
>
> To supervise the training, development and working conditions of the Planning and Design Section Staff. (Exhibit 9)

Following the analysis and comparison between this position and that of the grievor, the union summarizes as follows:

> To summarize, the similarities between the Supervisor's and Mr. Telfer's work far outweigh the differences. Except in a formal sense, there is little difference in the level of responsibility, even though it is exercised in some respects in a different direction. If the Supervisor's required education and experience may seem somewhat greater, it should be remembered that Mr. Telfer has worked for the Ministry for 25 years and has held his present position for six of them. From the point of view of the appropriate salary range for Mr. Telfer's work as defined in the new class standard, we submit that the Supervisor of the Design Services Unit is a valid comparator.

Another comparison is with Document Review Officer - Central Region. The union based its analysis of the duties on a competition notice. We are not of the view that this was a useful comparison.

The next comparison was with that of a Contract Documentation Officer, a position found at the Contract Preparation and Control Section at Head Office. The purpose of the position is:

> To ensure uniformity in the application of Ministry policy and procedures, by providing technical expertise in the scrutiny and preparation of contract documents submitted by the Regions and Districts to permit the processing of Capital Construction and Maintenance contracts through the printing and advertising stages.

Following its analysis of the similarities and differences between that position and that of the grievor the union submits that the duties and responsibilities of the Contract Documentation Officer are inferior to that of the grievor yet the position has a higher rate of pay attached.

The last comparison is with a Document Review Technician, classified as Specification Officer 3 (Atypical). The union

submits, following its analysis, that the qualifications are virtually the same as those of the Document Review Officer which are in turn less demanding than those of the grievor's.

The union indicated to the Board that should we re-establish a historical relationship between the grievor's position and that of Contract Documentation Officer an increase of 16.7% at the minimum and 22.6% at the maximum would be required. Alternatively if the rate was set at the mid-point between the pay or TM-17 and TM-18 the increase at the minimum would be 14.02% and 14.2% at the maximum.

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The employer also compared the old and the new class standards and, following its analysis, invited the Board to make a finding that the skills and knowledge required by the old and new standard are, overall, equivalent.

An internal comparison is made with that of Senior Specification Officer. It is submitted that this position illustrates the level of complexity and responsibility of positions allocated to the Specifications Officer 3 class and that the work described and encompassed by the new class standard is no stronger.

A further comparison is made with the position of Regional Program Development Officer (Specification Officer 3 - Atypical). It is suggested that there is a similar level of coordinating responsibility and that skills and knowledge requirements are also similar.

An argument was made that Plan Quantity Payment Verification Technician - also Specification Officer 3 (Atypical) has similar compliance responsibility and similar skills and knowledge requirements.

Finally, comparisons were made with some classes in the Technical Services Category "whose job functions bear some similarities to those of the new class standard". They are Technician 4, Road Design, Architectural Job Captain 2, and Technician 2, Municipal Engineering. In summarizing its analysis the employer submits:

> The Contract Review Officer class standard has a stronger coordinating function which is evident in the responsibility for the regional review process with respect to tendering documents and drawings and in the requirement for a thorough knowledge of the ministry contractual system, policies and procedures pertaining to design and construction. However, this is reflected in the respective salaries, i.e.:

Maximum Salary	Contract Review Officer	-	$903.88	($47,163 Annual)
" "	Tech 4, Road Design	-	$861.65	($44,960 Annual)
" "	Arch Job Captain 2	-	$826.02	($43,101 Annual)
" "	Tech 2, Municipal Eng	-	$803.54	($41,928 Annual)

As well as the above internal comparison, the employer also conducted an external survey with various municipal jurisdictions, submitting that for similar work performed the old Specification Officer 3 rates are ahead 8.65% at the survey mean at the minimum and 5.66% at the maximum.

Following an extensive review of the analysis done by the parties and after comparing the old class standards and job specification with the new we have concluded that the new class standard demonstrates added responsibilities, skills and knowledge requiring an increase in the rate of pay. The difficulty is to determine the value to be attached.

The employer submitted that no increase was warranted because:

- The new class standard is equivalent to the old class standard.
- The work described in the new standard is no stronger than that of other jobs classified against the old standard.
- The proposed salary rate for the new class is higher than other similar classes in the Technical Services Category, and is the 12th highest in the Category.
- Pay research data results show that the proposed rate is ahead of that paid by other jurisdictions for similar work.

In our view the position taken by the employer in the instant case was neither realistic nor helpful. Not realistic because it was fairly clear on even a cursory reading of the old and new standards that they were different and that, for whatever reason, the work performed by the grievor has become more complex in the time he has been in that position.

The employer argued, as it has in the past, that there was no difference in the work performed the day before the new class standard was promulgated, and the day after. That's obvious but it also misses the point. The new class standard was developed because the previous allocation of specification officer 3 (Atypical) no longer reflected the duties and responsibilities of

the position. Thus what is relevant is that the class standard has been developed to reflect the work and on the evidence the work, and the skills and knowledge required to do it have increased in level and complexity. Presumably, if there had been no difference over time, there would have been no need to establish a new class standard. What is important, then, is not that the work has changed from one day to the next but the fact that it has sufficiently altered over time such that the old class standard no longer adequately reflected the duties of the position.

This is not to say that the alteration will always result in an increase in complexity or higher skills and knowledge but it is fair to assume that an employee grieves the classification when this is perceived to have occurred. The odds are pretty good that a grievance is successful because of a change that has added something to the class. If it has not been modified, or if there has been a decrease in complexity or skills and knowledge, it is not likely that a grievance would have been filed, or if filed have been successful.

Given the above a Board will normally be looking for similar or

like positions on which it can base its determination. In the instant case the employer's comparators were, unfortunately not particularly helpful. We can draw little from the external comparison based on the evidence before us as there is little that demonstrates a significant degree of similarity between the grievor's position and those of the survey respondents. In fact, on their face they show more differences than similarities.

There are also difficulties with most of the internal comparisons. The comparison with the three jobs classified as Specification Officer 3 are difficult for two reasons. First, of the three only Senior Specification Officer is not an atypical position. Second at least 50% of the Senior Specification Officer's position duties bear little or no resemblance to that of the grievor's.

There are also difficulties with the other comparisons. First, the class standards are dated 1967, 1966 and 1963. It is not likely that they currently reflect the work performed. The Technician 4, Road Design is an atypical position and has been grieved. The majority of employees classified as Technician 2, Municipal Engineering, also an atypical position, have grieved

their classification and are awaiting a new class standard and the wage rate is proceeding to arbitration.

The last comparator is that of Architectural Job Captain 2. Although there appears to be some similarities, they appear to be of a minor nature and do not convey the levels of skills and knowledge required of the grievor's position.

The comparisons offered by the union also suffer from differences although, as a whole, they more closely relate to the type of work performed by the grievor. Our analysis confirms the union's submission that the best comparisons offered are those of the Project Manager and of the Contract Documentation Officer. We are satisfied, however, that, generally speaking, the class standard applicable to the Contract Review Officer does not demonstrate quite the same levels of skills and knowledge of either of the Project Manager or Contract Documentation Officer. We are of the view nonetheless that there is sufficient similarities that a significant movement towards the rates of pay of Project Manager and, to a lesser extent, Contract Documentation Officer is justified. Accordingly it is our decision that the

1990 rate of pay applicable October 21, 1990 shall be increased by 9.5% effective October 22, 1990.

The Board remains seized to deal with any matter arising from this Decision.

Nepean this 23 day of July, 1992

M. Brian Keller, Arbitrator

I concur

V. Peperkorn, Employer Nominee

I concur

L. Robbins, Union Nominee